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AN  
INQUIRY  
INTO  
THE PRESENT STATE  
OF THE  
STATUTE AND CRIMINAL LAW  
OF  
ENGLAND.

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BY  
JOHN MILLER, Esq.  
of  
OF LINCOLN'S INN.

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## PREFACE.

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THE first of the following papers appeared in the Forty-third, and the second in the Forty-eighth number of the Quarterly Review. One was published in September, 1819, and the other in December, 1820. Both of them, and especially the last, have been considerably altered and enlarged.

Whether it was desirable to print them in a separate form it is not my province to determine. They may have been judged of with indulgence when glanced over in a hurried manner, in the midst of others, though unfit to attract any degree of attention singly. Whatever opinion may be formed of the propriety of again laying them before the world, I hope no blame will be attached to the motives by which I have been actuated. The topics which are

brought under discussion can on no occasion cease to be interesting, but happen to be more than usually so in this country and in the present times. Though the truth of this is generally admitted, it is not yet sufficiently felt. It is long before those who influence legislative measures seriously begin to think on any subject, and longer before they can be brought to act. It is the object of the following pages to renew an appeal to them, in a case in which those who superintend public affairs will in some way or other be called upon to deliberate and determine.

Law Reports have gone on increasing with accelerating rapidity since the following remarks upon them were originally written, and all the inconvenience and mischief resulting from them has proportionably augmented, without the least endeavour having been made to effect a remedy. The acts of parliament annually passed continue as numerous and slovenly as they have for some time been, but a disposition to consolidation is now beginning to ma-

nifest itself, which one would wish to see exerted upon every branch of statute law, to which it can prudently be extended.

Criminal Law also requires to be further and more dispassionately examined. As far as regards the construction and management of prisons, general opinion has already undergone a change. It is at last perceived, that indulgence to prisoners had been carried too far, and that crimes were incontestibly increased by the means which were taken to reduce them. It is a question of still greater moment, whether the same erroneous opinions lately entertained with respect to them, may not still prevail in other topics connected with the penal code. Though I listened to Mr. Buxton's speech in the House of Commons, on the 23d day of May, 1821, with that delight which none who heard it could fail to receive from one of the most powerful and eloquent speeches ever addressed to a deliberative assembly in favour of extreme mitigation of punishment, I am convinced he and his friends are too sanguine and

enthusiastic, and that it will ultimately be found, that the kindness and compassion of their hearts has controlled the excellence of their understandings.

To the two papers formerly published, I should have wished to add a third, upon the principles and practice according to which the law of England is administered in courts of justice, more especially in those of equity. This I have been unable to accomplish. The inquiry is for various reasons so difficult and delicate, that it requires much consideration. Should time and opportunity serve for arranging the facts and observations I have collected, I may hereafter be induced to lay them before the public, unless some person better qualified should think proper to take up the subject.

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ON

THE STATUTE LAW

AND

LAW REPORTS.

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THE LAWS of England are chiefly composed of Acts of Parliament, and the Judgments pronounced by Courts of Justice in causes which are brought before them. The power of acts of parliament to make new laws, or alter old ones, is universally acknowledged; and it is known to those who are conversant with judicial proceedings, that a consistent train of decided cases soon acquires, with respect to many important matters, a degree of force and authority little inferior to that of enactments of the legislature. It is desirable, that the rules which spring from either of these sources should, for

the sake of all who are amenable to their jurisdiction, be sound, clear, and compendious. With a view to ascertain how far these epithets can, at present, be applied to them with propriety, it is the purpose of the following observations to inquire into the magnitude which the collections of Acts of Parliament and Law Reports have already reached ; to examine the causes of that increase ; and point out the consequences which will follow unless the evil can in some way or other be arrested. To endeavour to confer upon the subject adventitious interest or consequence, would neither be wise nor becoming. Possessed in itself of few or no qualities calculated to attract or secure observation, it may long bear with inattention, but will not submit to be always and altogether neglected. It is too intimately connected with the security and enjoyment of life and property, ever to cease to be a matter of general concernment in a free state ; and through all the obstacles which matters of a more imposing or amusing nature may throw in the way, will silently and effectually vindicate its own importance.

The first point into which it has been proposed to inquire, is the size which Acts of Parliament and Law Reports have already reached.

No maxim in jurisprudence is better esta-

blished than this, that every state within the limits of its own territory is entitled to exact, and its subjects are bound to yield obedience to all its laws. Unless this principle were admitted, the complete administration of justice could not be secured, nor the good order of society established and maintained. This right on the part of the rulers, and obligation on the part of the people, rests upon a presumption, that the legislative authority in the state has made the laws so clear and public, that every member of the community either knows them, or must be culpably negligent if he does not. ‘Leges sacratissimæ,’ says the Roman law, ‘quæ constringunt hominum vitas intelligi ab omnibus debent, ut universi, præscripto earum manifestius cognito, vel inhibita declinent vel permissa sectentur.’—*Cod. lib. i. Tit. 14. § 9.* Under no form of government however, whatever may have been the simplification of the laws and the intelligence of the people, is this presumption justified by the fact. In the earliest stage of regular government, all the laws are never known to every one who is amenable to their jurisdiction. As civilization advances, and trade and wealth increase, the public and private relations of the different members of society multiply, and laws necessarily become more

numerous. At last, the rights and interests introduced or recognized by law, become so various and complicated, that to understand the whole or even a branch of the jurisprudence of any particular state, proves the business of a laborious life; and no skill or industry can then mould it into such a form as to make a thorough knowledge of every branch of it attainable even by persons of liberal education and pursuits. That we cannot however do all we wish is no reason why we should not accomplish all we can; and when the accumulated penalties, restrictions, rules, and regulations, respecting life and property, which are created by decisions and acts of parliament, are duly weighed, it must surely in fairness be admitted, that to give to our laws all the improvement and publicity which increased knowledge and experience can suggest, is not a favour which the government of a country may confer or withhold at pleasure, but one of the most urgent and sacred duties which it is called upon to discharge.

It is to be lamented that so few attempts of this kind have hitherto been made in this country, and it is difficult to be accounted for otherwise than by supposing that the extreme number of technical terms and expressions which occur in the law of England, and the artificial

form into which almost every part of it has been thrown, have prevented it from becoming so generally an object of attention, as among an enlightened people peculiarly jealous of their rights and privileges we should expect to find it. This observation is far from being intended to convey any wish that it should become a prevailing habit for gentlemen to meddle too much with law or legislation : all that is meant is this, that if a succession of men of cultivated and comprehensive minds, who are not lawyers by profession, and who now fill seats in either House of Parliament, or are hereafter likely to do so, had made themselves more intimately acquainted with the details, as well as principles of our civil and criminal code, and had subjected every branch of it to frequent and dispassionate examination, it would have been highly honourable to themselves and beneficial to the nation. As an instance of the sort of knowledge and exertion, for the increase of which a desire is here expressed, and of the advantages which would have resulted from its prevalence, we refer to Earl Grey's Speech on Lord Sidmouth's Circular Letter, in the House of Lords, in 1817, which affords a striking example of the success with which an acute mind, not regularly trained to the study of the law, may prosecute



the investigation of some of its most abstract doctrines.

If it is imagined that without any interest in the state of the law being manifested by the nation at large, the executive government for the time being, or those who are concerned in the administration of justice, will spontaneously rectify or supply whatever is erroneous or defective in our jurisprudence, there never was a more mistaken notion. The slightest historical retrospect will show how rarely any point of general law has been taken up within the walls of parliament, unless the attention of the public has been previously directed to it from without. The officers of the crown seldom introduce any bills except such as are called for in the common course of business, or on the spur of the occasion. Instructions for these are usually sent in a hurry either to the solicitor of that particular department of the executive government under whose cognizance they are supposed naturally to fall, or to the person usually employed by government in preparing acts of parliament, by whom they are hastily thrown into form without sufficiently attending to the operation or connection of the clauses which compose them. With regard to those who are engaged in the administration of justice, however singular it may



seem, experience has amply proved that they are among the last persons from whom any amelioration of the law can be expected. From the hour of their appointment, the judges are too much occupied with the execution of the law as it is, to be able to devote much consideration to what in their judgment it ought to be; and, with advancing life, they contract an increasing fondness for forms and practice with which they have become familiar, and a dislike to any alteration of them. Those on the other hand, who have attained to great eminence at the bar, are obliged to submit to a degree of labour even more severe than that of the judges, and tending still more to disqualify them for suggesting any legislative improvement. Their whole powers are exhausted in comprehending minute facts, or in endeavours to secure the success of the party for whose benefit they are engaged; and to suppose that under such circumstances they can bestow much reflection on the means by which law and equity might be more expeditiously or effectually administered, is almost the same thing as to expect that the human understanding should be capable of contraction and enlargement at the same moment. Even the kind as well as degree of labour which they undergo is unfavourable to any proposal of amelioration. The bulk of legal

practitioners never extend their views beyond the mechanical functions they are called upon to perform; and remain strangers to the inadequacy of any of our judicial establishments to answer the ends for which they were instituted, until a desire for sweeping reform has been loudly and generally expressed, of which increasing symptoms are in various quarters making their appearance. It is to avert any such extremity as this, and to supersede the necessity of any great and instantaneous change in the substance or administration of our laws, that the attention of the public is now solicited to their present size and condition, from a firm conviction that a remedy of some sort or other must at no distant period be applied, and that the longer it is delayed it will only be the more violent and its efficacy the more doubtful.

As this inquiry is intended to apply solely to the present state of Reports and Acts of Parliament, such remarks shall now be offered on each of these heads as the attention which has been paid to them affords the means of suggesting, beginning with the Reports of adjudged Cases in Courts of Law and Equity.

All men, who are not blinded by confidence or vanity, will naturally wish that some record should be preserved of what those who are dis-

tinguished for wisdom and experience have said or done in cases similar to those in which they themselves may be called upon to act or deliberate. This species of authority is of peculiar importance in questions of law, where intuitive genius and unassisted strength of understanding are of less use than in most other sciences, and its value must be greatly enhanced where the decisions reported have been given by judges of exalted reputation, and whose minds have been accustomed to point out the distinctions and arrange the conflicting facts and doctrines, which perplex the cases brought into courts of justice. If due allowance had been always made for the arduous duty which must necessarily devolve upon judges, the uncertainty of the law would have less frequently become the subject of ridicule and reproach. It is not in points of easy solution that uncertainty usually prevails; or that the assistance of the judge is called for, but in cases where it is impossible to avoid pronouncing sentence in favour of one party and against another, and yet where the merits of the case and the rules of law are so equally balanced, that it ought not to be matter of surprise if men of the greatest natural and acquired endowments should often arrive at opposite conclusions. Yet even in such instances, the comparison of reports of cases, in

which judges have drawn opposite inferences from the same premises, is of important service in advancing justice, and promoting uniformity of decision. An opportunity is afforded of discovering at what point of the deduction the first false step was taken, or how undue weight came to be attributed to any particular legal maxim or equitable consideration. A similar error is therefore more likely to be avoided in time to come, and inconsistency in judicial determination to be less remarkable than if no such friendly light existed. If it ever was fit that the solemn determinations of courts of justice should be recorded for the instruction and guidance of future judges and advocates, it has been peculiarly so in later times. Without detracting from the merit of those who flourished in antecedent periods, it may safely be affirmed that the judgments pronounced in our different courts of law and equity, within the last sixty or seventy years, have never been surpassed either in this or any other country, for exact knowledge of the facts of the case which they display, their comprehensive views of policy, the soundness of the legal principles on which they proceed, or the firmness of every link which is to be found throughout the chain of the deduction. If it should happen that there are just grounds for suspecting the wisdom of an acknowledged rule

of law, or the assumption of a particular branch of jurisdiction, it will seldom be found, that any countenance is afforded by later judges to those of their predecessors by whom the first error in such cases was committed; and not unfrequently have they, in distinct terms, expressed their disapprobation of a precedent, which at the same time they did not feel themselves authorized to overturn.

It will not, therefore, be supposed, that any disposition is entertained to undervalue Reports, when published under reasonable limitations with respect to number, length, and subject. It is only when carried to excess that they become liable to censure; and that such excess exists at present, few who are acquainted with them will be disposed to call in question. In order to judge of their present size, compared with what it was about two centuries ago, take the following passage which occurs in Lord Coke's preface to his Fourth Reports: 'To  
' the former reports you may add the exquisite  
' and elaborate commentaries of Master Plowden, a grave man, and singularly well learned;  
' and the summary and fruitful observations of  
' that famous, and most revered judge, Sir J.  
' Dyer, Kt. late Chief Justice of the Common  
' Pleas, and mine own simple labours: then



‘ have you fifteen books or treatises, and as  
‘ many of the reports, besides the abridgments  
‘ of the common laws ; for I speak not of the  
‘ Acts and Statutes of Parliaments, of which  
‘ there be divers great volumes.’ So that in  
Lord Coke’s time, about thirty volumes formed a  
sufficient stock for a lawyer’s library, with which,  
if he was tolerably acquainted, it is to be pre-  
sumed that he was qualified for practice. In the  
present day, Reports alone amount to upwards  
of 200 volumes, exclusive of those which relate  
to Election, Admiralty, and Ecclesiastical law ;  
—a mass which no well employed lawyer can  
undertake to read, without pretending to digest  
it. But this is not all. The rapidity with which  
they are progressively increasing, is an evil  
of a more alarming nature than even the  
bulk to which they have attained. Those pe-  
riodically published, are Swanston’s Cases in  
Chancery, Wilson’s in Chancery, Maddock’s  
in the Vice Chancellor’s Court, Barnewall and  
Alderson’s in King’s Bench, Dow’s in the House  
of Lords, Daniell’s on the Equity side of Ex-  
chequer, Buck’s in Bankruptcy, Ball and  
Beatty’s in Chancery in Ireland, Moore’s in  
Common Pleas, Price’s in Exchequer, Taunton’s  
in Common Pleas; Starkie’s at Nisi Prius in  
King’s Bench and Common Pleas, Holt’s at

Nisi Prius in Common Pleas; and to complete this muster-roll of names, Chitty's Points of Practice in King's Bench, besides Daniell and Dodson's in the Admiralty, and Phillimore's in the Ecclesiastical Court. How much faster they may increase hereafter, no one can calculate, but even now, they amount altogether to 8 volumes a year, at which rate, they will make 160 more in the course of the next twenty years, and will swell to 800 within the century. That such an accumulation can go on for an indefinite length of time, is impossible. Either the evil must speedily and effectually be checked, or long before it has attained the height above mentioned, a Digest will be deemed indispensable, and another Tribonian must be selected to superintend its execution.

To produce such endless ranks of Reports, various causes have contributed. Lord Coke tells us, that from the time of Edward III. to Henry VII. ' the kings of this realm did select four discreet  
' and learned professors of the law to report  
' the judgments and opinions of the reverend  
' judges, as well for resolving of such doubts  
' and questions, wherein there was diversity of  
' opinion, as to fix the genuine sense and con-  
' struction of such statutes and acts of Parlia-

‘ment as were from time to time enacted.’ When this selection was discontinued, Plowden, Dyer, Coke, Raymond, and Croke, who supplied their place, and published lavishly enough perhaps for their times, were men of high rank and reputation, who did not print for emolument, but from a wish to perpetuate their name, or benefit a profession to which they were warmly attached. This character reporters have now lost, and the practice of reporting is resorted to for the purpose of obtaining experience, instead of communicating it; as a source of emolument; or an introduction to practice. For the attainment of these ends, it is necessary to keep themselves as much in the eyes of the world as possible; and cases at *Nisi Prius*, which never ought to have been received as authority at all, unimportant matters of practice, points perfectly settled, and speeches of counsel at full length, are detailed as laboriously as solemn determinations of the judges on the most important questions. In fact their own interest, or that of their booksellers, induces the Reporters of the present day, instead of printing as little as they can, to print as much as the public will receive. It ought, at the same time, in justice to Reporters, to be mentioned, that they are now actually not at liberty to exercise



their own discretion respecting what they publish. Where there are two concurrent Reporters, each is under the necessity of publishing as much as he can, because he who publishes most, is sure to have the greatest sale; and where one alone occupies the ground, he is afraid of raising a competitor by not publishing sufficiently largely. But however these considerations may exculpate Reporters, they in no respect alter the case with respect to reports themselves. These still remain too numerous; speeches of counsel are too much detailed; and even the judgments of the court might frequently be abridged, and would be materially benefited if they were. It is even worthy of consideration, whether the learned persons who preside in courts of justice, might not more frequently make use of extended notes in delivering their judgments than they have ever done, or what would perhaps be still more desirable, read them entirely from a written paper. The practice of preparing these notes, or of writing judgments fairly out, would no doubt occasion much trouble to judges, especially to those who had not been in the habit of committing their thoughts to paper; but the important benefit resulting from the practice would greatly outweigh the inconveniences attending it. No

one who has heard Sir William Grant read a judgment, or Sir William Scott deliver one which he is believed to have written, can have any doubt of the value of such a preparation. In cases of nicety at common law, and in the still more complicated ones which occur in equity, it is beyond the power of any judge, whatever his capacity and memory may be, to advance regularly through an extended exposition of facts, and application of legal principles, assigning to each its due place and importance, if he relies altogether upon extemporary recollection, or even upon the remarks which have been made at the bar, or which his own mind may have suggested to him, during the course of the discussion. Much that is irrelevant will be introduced, and more or less of what is important will be omitted; the greatest self-possession will not prove a sufficient security against wandering and repetition; the most logical reasoner will occasionally be misled by thoughts which unexpectedly present themselves, and lead insensibly from one point to another, until they end in a position, which upon examination proves untenable; and the most correct speaker will not at all times use appropriate language, in matters where the precise terms and turn of expression employed are perhaps of greater

consequence than in any of the exacter sciences. There can be no doubt that to these sources of error many of the *dicta* and illustrations of judges, which may be found in the books, are to be traced, which they themselves did not intend to introduce at the time they began to speak, and which have ever since contributed to perplex both the bar and the bench.

Having adverted to the vast increase of reports, and causes which produce them, let us now turn to the consequences to which this accumulation leads. The money and space necessary to buy and contain them, are themselves evils of no small moment: but it is a grievance of a much more serious nature, that every volume of them which sees the light immediately becomes authority, and must, in future, occasionally be consulted. In this respect they differ from every other species of publication. If a treatise is published on any branch of literature or science, unless it is possessed of intrinsic merit, it sinks quietly into oblivion, and is never afterwards disturbed by reference or quotation. Reports do not die so easily. However unworthy of encouragement from the cases selected, or the manner in which they are detailed, if they contain a judgment on a single point on which none has till then

appeared in print, they cannot safely be neglected. The latest and best will naturally be consulted most, but not one in the whole catalogue can be entirely disregarded; and every addition that has been made to the list, from the Year Books down to the last blue-covered number with which the law-bookseller has supplied his customers, is received with a sort of superstitious apprehension by the lawyer, as adding another file to the extending line along which he is obliged to fight. As the most persevering industry, with every help he can borrow from Digests and Indexes, will not enable him to read all the Reports of which he is possessed, to which is he to give the preference? Is he to betake himself to the earliest, the latest, or the best, which very possibly may be neither the one nor the other? In the mean while, every fresh augmentation of the number more oppresses him, and feeling that they already exceeded what his mind could grasp, he renounces in despair all intention of searching for general principles to connect or controul them. It would have been presumptuous to have expressed this opinion so unreservedly, unless it had been generally entertained, and that by persons of very great legal eminence. Among others, the late Justice Dampier and Sir S.

Romilly concurred in it, and Sir V. Gibbs, when Chief Justice of the Court of Common Pleas, repeatedly and strongly expressed himself to the same effect, both in words and writing. Nor is it to the bar alone that the excessive accumulation of Reports is prejudicial: its influence is nearly, if not altogether, as pernicious upon those who fill the bench; as it enables those who are placed there to give much greater latitude to their natural disposition or acquired habits of thinking and acting than they would have otherwise possessed. The judge who is of a timid or contracted mind will do nothing, however consonant to reason and principle, if a case can be quoted to him in which it ever was decided otherwise; while another who is disposed to make every thing bend to his own peculiar views is sure to be supplied with some case in which an opinion has been given by some court or another, which he may adduce in confirmation of his own notions of principle or practice, however erroneous or extravagant.

Acts of Parliament come next to be examined, the number of which is swelling with as much rapidity as Reports in courts of law.

The edition of the Statutes at Large by Tomlins and Raithby, which is the most condensed



of any hitherto given to the public, forms sixteen volumes in quarto and two parts, from Magna Charta to the end of 1818; five volumes and a half of which comprise the acts from King John to the end of the reign of George II. and the remaining ten and a half are filled with those of the present reign. Since the Union with Ireland a thick closely-printed volume has been published every two or three years, and the average number of public acts passed in each of the last eighteen years amounts to 140. At this rate of accumulation, their size at the end of the present century will have swelled to fifty of such ponderous quartos, and the number of public acts to 14,000—no inappropriate companion to the 800 or 1000 volumes of Reports which at that period are likely to compose a portion of the treasures of a lawyer's library. If any person should take the trouble to verify this statement, it will be found rather to fall below than exceed the truth, and when the surprize has ceased which it is calculated to awaken, the first question we are irresistibly impelled to ask, is, whether all this mass of legislation be indispensably necessary? If it is, it becomes our duty to submit to it with the resignation with which an inhabitant of the Alps eyes the progress of a superincumbent glacier, which he perceives

year after year increasing and descending, and which he foresees must at no distant period overwhelm him. That such must be the effect of the present multiplication of laws if suffered to continue, no reasonable man can doubt. ‘We,’ says Lord Stair, in the Dedication to his Institutions of the Law of Scotland, as it stood in his time, ‘are not involved in the labyrinth of  
‘ many and large statutes, whereof the posterior  
‘ do ordinarily abrogate or derogate from the  
‘ prior, that it requires a great part of a life to  
‘ be prompt in all those windings, without  
‘ which no man can with sincerity and confidence consult or plead, much less can the  
‘ subjects, by their own industry, know where  
‘ to rest, but must give more implicit faith to  
‘ their judges and lawyers, than they need or  
‘ ought to do to their divines.’ But the necessity of such a multitude of public laws ought not to be hastily admitted. If there is any one subject on which experience, and the concurring streams of knowledge of every kind have given us an incontrovertible superiority over our ancestors, it is in that of legislation; and by the use of proper means, there is the strongest reason to indulge a belief that the evil complained of, if not entirely removed, might at least be greatly alleviated. Among the causes of

the present size of the Statute Law; the number of those relating to the revenue; those prohibiting or encouraging importation and exportation; those which are local and temporary; those which proceed from a love of legislation; and the inaccurate and slovenly manner in which the whole body of Acts of Parliament are drawn up, may be named as the most prominent. On each of those, a few observations shall be offered in their order.

1. *The number of Revenue Laws.*—During each of the last eighteen years, the number of acts passed exclusively relating to the revenue, has amounted to forty, and those which are connected with it indirectly, and owe their existence to no other cause, will be found to rise to nearly twenty more. This comprises almost one half of the whole laws annually enacted; and considering the numbers which now pass every session, it is surely an inordinate proportion. When we reflect too on the recent period at which financial law has been introduced into this country, it adds much to the regret and apprehension with which every one who values a liberal system of jurisprudence cannot fail to regard it. The great era of taxation only began towards the conclusion of the American war; and when it is considered how



many articles of trade and manufacture, and how many sorts of property have been put under the lock and key, or at least the inspection of the tax-gatherer, one cannot help feeling that the multitude of revenue acts have become extremely obnoxious, merely as a body of complicated law to which obedience must be paid. These acts, too, are, from their very nature, the most involved and incomprehensible of any to which we are subject. When we take into account the difficulty of effectually securing to Government a duty imposed for the first time; that fraud, ingenuity, and the gradual advancement of science open one loop-hole after another for the evasion of duties, which it requires a fresh Act of Parliament to shut; that new duties and penalties are frequently added to old ones, or old ones totally or partially repealed; that it may become necessary to levy a tax formerly imposed, by new officers, at a different place, or in a different manner; and that through the whole series of enactments introducing these alterations, there is invariably inserted a clause of reference to all former acts on the same subject, it may easily be conceived to what a chaos the Revenue law is now reduced. Of this clause of reference, which is one main cause of the confusion existing, take

the following instance, out of thousands that might be offered, which occurs in the 46th section of the 43 Geo. III. c. 68. ‘ And be it  
‘ further enacted, that every Act of Parliament  
‘ in force on and immediately before the 5th day  
‘ of July, 1803, by which any rules, regulations,  
‘ conditions, or restrictions, were made, established, or directed for the ascertaining the  
‘ value of any goods, wares, or merchandise, or  
‘ for the remitting or allowing of any deduction  
‘ of any duties on account of damage, or for the  
‘ better securing the revenue of customs, or for  
‘ the regular importation into, or exportation  
‘ from Great Britain, or the bringing or carrying coastwise, or from port to port within  
‘ Great Britain, or the entering, landing, or  
‘ shipping of any goods, wares, or merchandise  
‘ whatever, except where any alteration is expressly made by this act, and all provisions,  
‘ clauses, matters, and things relating thereto,  
‘ shall, and are hereby declared to be and remain in full force and effect.’ The clause of reference contained in every act by which Excise duties are imposed is of a still more comprehensive nature. When it is considered, that the acts now in force with regard to spirits alone amount to more than 140, and that others on the same subject, though either expressly or impliedly repealed, are still referred to in the

Statute Book, and must be occasionally consulted in order to explain those in being, it would be marvellous if the trader should not be foiled in his attempt to understand that which it requires all the ingenuity of an exciseman, and the utmost skill of the Barons of the Exchequer to unravel. The whole family of Stamp Acts, through every one of its ramifications, is bound together by the same species of reference with that class which has been now instanced. Such an indefinite species of connection no doubt saves time and trouble to those by whom Acts of Parliament are drawn up, and may be deemed by the Commissioners of the Treasury a proper and general security for the exaction of duties, of which a flaw in some particular clause of the act which specially relates to the subject, may have failed to justify the exaction; but must, of necessity, be harassing in the extreme to all who have to consult or act upon them. It is well known that the exclusive attention of a professional life is scarcely sufficient even already for the attainment of a competent knowledge of any one branch of our municipal institutions; and each separate class of our Revenue Acts presses for careful and complete revision and consolidation, with a degree of urgency which it will not long be practicable to resist.

Besides being objectionable on account of their intricacy and number, which are the only points of view coming properly under consideration in this place, the manner in which the acts alluded to restrain commercial transactions, and abridge the subject in the controul and management of his own property, are evils to which it may not be altogether improper to advert. The inconvenience occasioned by them may be lightened as much as the fair collection of the duties will allow, but it never can be effectually removed. Soap, candles, and spirits, in every stage of the manufacture, are under the lock or seal of the Excise; and in almost every other exciseable commodity, it is indispensably requisite for the trader to give previous notice to the Excise officer of the different steps of the process before they are begun. In some instances the excellence of the manufactured article is actually affected, of which satisfactory evidence was produced with respect to glove-leather, before the Committee of the House of Commons, which sat on the leather trade in 1814; and at all times such restraint cannot fail to be vexatious, because it prevents a man from carrying on his own business, at his own time, and in his own way. It is much to be wished that these regulations and exactions should in future

be diminished rather than extended ; otherwise that interference which at first was only felt as troublesome, will in the end come to be hated as insulting, and dreaded as oppressive.

The immoral tendency of the present system of Revenue law is not less to be lamented than its size and intricacy. The variety and high rate of duties imposed offer such irresistible temptation to illicit traffic, and incitement to every species of contrivance by which the Crown can be defrauded—penalties are incurred so much beyond what the offender knows there is any probability of being exacted—the sanctity of an oath is so frequently and flagrantly abused—and so much encouragement is given to that worst of all necessary evils—informers—that the extension of the Revenue law to so many articles of trade and manufacture cannot be contemplated without feelings of the deepest sorrow. One always is inclined to doubt whether measures can really be good in point of finance, which lead to conduct so abominable in point of morality. The encouragement offered by the Revenue law to informers, and which it does not seem practicable to avoid as long as taxes are raised on so many articles of manufacture, appears to be one of the very worst consequences of the system. By 22 Geo. II. c. 36. not only the im-

porter, but all subsequent sellers, and also the makers up of foreign embroidery, and gold and silver lace, are subjected to have the goods burnt, and to pay a fine of 100*l.* for each piece discovered, the half of which is given to the informer. By 18 Geo. II. c. 26. and 7 Geo. III. c. 43. any person importing and selling except for exportation, or wearing French lawn or cambric, is made subject to a penalty of 5*l.* for each offence: but if the wearer is prosecuted, and discovers upon oath the person from whom the same was purchased, he is relieved from the penalty. The 19 Geo. III. c. 19. which imposes penalties on persons who sell tea without having the words ‘Dealers in Tea’ painted over their doors, *and on those who buy tea of such persons*, indemnifies the seller, *if he informs against the buyer*. The 11 Geo. I. c. 30. imposing penalties on the seller of prohibited or run goods, and also on the buyers of such goods, or goods which the seller pretends to have been smuggled, exonerates the party *who shall first prosecute the other with effect*, from the penalties incurred by himself. By 4 and 5 William and Mary, c. 15. every person who insures prohibited or smuggled goods, and every person who agrees to pay any sum of money for such insurance, incurs the penalty of 500*l.*; but if the



insurer discovers the fraud, he may keep the insurance money, is discharged from his own penalties, and entitled to half the sum forfeited by the party making the insurance : or if the insured should turn informer, then he is to receive back his insurance money, is discharged from his own penalties, and entitled to half the sum forfeited by the insurer. The most direful necessity can scarcely reconcile one to so revolting a method of effecting the intentions of the legislature, as thus to convert master and servant, buyer and seller, into spies and informers against one another, in direct violation of some of the most sacred obligations by which society is held together.

With any observations upon the principles of taxation, it would be manifestly inexpedient to perplex this inquiry. It may be perfectly true, according to the received maxims of political economy, that indirect taxes when considered in the abstract are the most desirable, and yet a period may arrive in which they prove so numerous and complicated, that it may become a serious question whether it would not be advisable to change the system altogether, and be better and cheaper for the government, as well as easier and less corrupting to the people, to have the same sum raised by few and weighty

taxes instead of a multitude of small ones. Should such a plan be ever deemed advisable in practice, it will at least have this recommendation, that it will contribute more to restore the vigour and simplicity of the law than any principle which has ever received the sanction of the legislature.

2. Another set of laws which have greatly helped to swell the Statute book, are those which grant *bounties on exportation or importation*, and those which prohibit exportation or importation for a limited or unlimited time.

It is not within the scope of these observations to say any thing respecting the wisdom of the policy by which these enactments have successively been dictated. It is only alleged that their number has exceedingly incumbered the law, and that so many of them have been suspended, repealed, and re-enacted, either in whole or in part, that persons whose private interests lead them to consult them, cannot discover with reasonable precision either what the law was or is, with regard to almost any one commodity. The great law against importation is 3 Edward IV. c. 4. passed in 1463, which affords so excellent a specimen of the language used on subsequent similar occasions that it is here inserted. ‘Whereas in the said Parliament, by



‘ the artificers, men, and women, inhabiting and  
‘ resident in the city of London, and other ci-  
‘ ties, towns, boroughs, and villages, within this  
‘ realm and Wales, it hath been piteously showed  
‘ and complained, how that all they in general,  
‘ and every of them be greatly impoverished,  
‘ and much injured and prejudiced of their  
‘ worldly increase and daily living by the great  
‘ multitude of divers chaffres and wares per-  
‘ taining to their mysteries and occupations,  
‘ being fully wrought and ready made to sale,  
‘ as well by the hands of strangers being the  
‘ King’s enemies as other, brought into this  
‘ realm and Wales from beyond the sea, as well  
‘ by merchants, strangers, as denizens, and other  
‘ persons, whereof the greatest part in substance  
‘ is deceitful, and nothing worth in regard of any  
‘ man’s occupation or profit; by occasion where-  
‘ of the said artificers cannot live by their mys-  
‘ teries and occupations, as they used to do in  
‘ times past, but divers of them, as well house-  
‘ holders as hirelings, and other servants and  
‘ apprentices in great number be at this day un-  
‘ occupied, and do hardly live in great idleness,  
‘ poverty, and ruin, whereby many inconveni-  
‘ ences have grown before this time, and here-  
‘ after more be like to come (which God defend,)  
‘ if due remedy be not in their behalf provided,’

&c. The remedy then provided was the complete prohibition of the importation of almost every wrought article for use or ornament at that time known. In furtherance of the principle of this law, we have since taken one step after another, until there is hardly one considerable branch of trade or manufacture that is not depressed or encouraged by a prohibition or a bounty. The woollen manufacture, linen, cotton, beef, verdegrease, gunpowder, leather, silk, sail-cloth and cordage, chip and straw manufactures, whale, cod, herring and pilchard fisheries, butter, cheese, lace, glass, sugar, and corn, have all, with more or less attention, become the objects of parliamentary indulgence. There have been 194 acts passed, prohibiting importation and granting drawbacks and bounties on exportation; 54 respecting the cotton and linen manufactures; 113 relating to the fisheries; 23 relating to sail-cloth and cordage; 29 relating to the corn-trade; and a proportional number upon other subjects, according to their real or conceived importance.

It would be fatiguing to enter into a detailed examination of the whole of these statutes, but it may not be improper, by way of example, to subject a few of them to closer inspection, in order to show how little knowledge, foresight,

and consistency Parliament has evinced in the enactment of them. The first we shall mention is the act of Charles II. which, for the benefit of what was then regarded as the staple of the country, compelled persons of all ranks and conditions to be buried in woollen, whether their surviving relatives were able or willing to fulfil the provisions of it or not. It is difficult to determine whether this statute is more remarkable for the absurdity or tyranny of the means by which it endeavoured to attain its object. As might have been expected, it soon sunk into oblivion, in which it would probably to this day have continued, had it not been for a conviction under it, which unexpectedly took place a few years ago and caused its repeal by 54 Geo. III. c. 108. The linen trade received every sort of legislative encouragement during almost the whole of the last century; as it sunk in importance it became neglected, and the bounties on English linen were totally repealed by 52 Geo. III. c. 96. Those on Irish linen had the good fortune to be continued by c. 69. of the same year. A bounty on Irish cotton was granted by 45 Geo. III. c. 18. and taken away by 55 Geo. III. c. 181. By 24 Geo. III. Sess. 2. c. 21, the exportation of British skins of certain sorts is prohibited for the purpose of encouraging the hat manufactory.

One does not at first sight see what possible reason could have been alleged for this act, as it is not probable such skins would have found a better market abroad than at home. The 28 Geo. III. c. 38. for consolidating the acts prohibiting the exportation of live sheep, wool, and manufactures of wool slightly made up, appears to be equally unnecessary. Every one of the articles prohibited would fetch as good a price at home as abroad, and it does not appear that any such restriction is necessary to be laid on English sheep and wool, either on account of their breed or quality. By 41 Geo. III. c. 99. a bounty is given for bringing fish for sale to London, Westminster, and other places; and by 45 Geo. III. c. 64. it is enacted, that ‘whereas 6000*l*. had been paid in respect of ‘the first mentioned act into the Treasury of ‘Ireland, and the whole of it had not been ‘expended, the Lord Lieutenant is permitted ‘to expend it on the improvement of harbours ‘on the coast of that country’—a much wiser application of the money beyond all question, but it proves with a degree of force, beyond what even demonstration possesses, what preposterous laws a rage for bounties may occasion. Other instances of the same sort might be here adduced, but they will find a more ap-

propriate place under the head which immediately follows. Nothing need be said of drawbacks and bounties, as in the point of view in which they are now considered they stand in every respect in the same circumstances. Every addition which is made either to the one or the other, is sure to give exporters fresh opportunities to cheat the government by obtaining allowances to which they are not entitled; and of the number, wealth and good reputation of the merchants and manufacturers by whom such frauds are practised, it is believed none but the officers of the Customs and Excise have any adequate conception.

The main object of the whole of these various enactments is, to prohibit the introduction of all foreign commodities with which we can supply ourselves at home; and if we cannot, to permit the importation only of such commodities as are unwrought, and that only upon condition of their paying a duty on their entry. As this system unavoidably tends to make every thing in our market dearer, our own manufactures have no chance of being disposed of abroad, unless part of the price is paid to the exporter in the shape of a drawback or a bounty. Whether this line of policy is wise in the abstract, how far it may become necessary



in one state in consequence of its adoption in contiguous ones, and to what extent it may be changed or corrected after it has been once introduced, however injudicious that introduction may originally have been, is perhaps among the most difficult problems which statesmen are called upon to solve. They come no further into question here, than as the accumulation of them strengthens a suspicion which has long been entertained, that legislative interference in such matters rarely proves beneficial to a country at large, and that when all the trades and employments who have craved assistance or protection from the legislature have obtained them, they prove, like parish relief, baneful to themselves, and injurious to their less clamorous neighbours. Such acts may prolong the languishing existence of some manufactures, but check the growth of double the number of others, and prevent capital and industry from flowing into those fresh channels which a change of circumstances might induce them to take. Of the mischievous effects which such a course of legislature has upon the body of our law, there can be no question. Whatever its operation may be in other respects, it is here sure and steady; and, as each of such successive

acts receives the approbation of the Crown, it has precisely the same effect with those already mentioned which relate to the Revenue, in causing the perplexity of the Statute Book to go on increasing in geometrical progression.

3. A third cause of the size of acts of parliament is the enactment of *local*, *particular*, or *temporary laws*, instead of *general* and *permanent* ones.

It is no doubt true, that there are a few acts, such as those for continuing certain duties, for punishing mutiny and desertion, for the payment of the army, and their quarters, and for the regulation of his Majesty's marine forces while on shore, which continue out of constitutional jealousy to be passed for one year only. Even then it is not in itself an advantage to have these fundamental laws printed annually; and that circumstance affords no justification for extending the practice to other classes of acts, which are now repeated without any such necessity.

It is difficult to account for the extent to which *local* acts have been carried in this country, where there is less excuse for them than in almost any other kingdom in Europe. There have altogether been 50 passed for the recovery of small debts in different towns and districts, and 43 of them within the reign of his

late Majesty. Why might not a general law have been so framed as to adapt itself to all parts of the kingdom? The local acts for the management of the poor are still more numerous; and though many of them are perhaps unavoidable, they at least have the effect of showing the danger of suffering one questionable law to pass, as none can tell how many others may follow in its train. The 17 Geo. III. c. 11. is for the prevention of abuses in worsted manufactures in the counties of York, Lancaster, and Chester. The 24 Geo. III. Sess. 2. c. 3. extends the act to Suffolk, and the 31 Geo. III. c. 56. to Norfolk. According to this plan of legislation, if the worsted manufacture should hereafter be established in other parts of the country, we may have the principal provisions of this long and intricate act ten or twenty times repeated, which by a little foresight and consideration might have been avoided. The 17 Geo. II. c. 8. relates to the packing of butter in New Malton, Yorkshire; a subsequent act to the packing of butter in the city of York; and it is believed there is another, relating to the same matter, for Ireland. One should think the whole of his Majesty's subjects might be allowed to pack their butter according to their own fancy; but even allowing it to be



fit that Parliament should order and enact in what way butter is to be packed, it is still difficult to perceive why there should be two special acts on that subject for the city of York and town of New Malton, and none for the rest of the kingdom. By the 9 Anne, c. 18. and five or six other acts, provisions were made of a local and partial nature to prevent injury to certain roads from excessive loads on waggons, which have at last met with the fate that ought always to attend so narrow a sort of legislation. After the usual process of *explaining*, *amending*, and *making more effectual* had been sufficiently repeated, these and a number of others relative to the highways of the kingdom were repealed in a body, and 37 Geo. III. c. 39 and 42. were enacted as the general laws on the subject, with which it would have been more creditable for Parliament to have begun than ended. In the same way almost every great river in the kingdom has a law of its own for the protection of salmon, with peculiar provisions for carrying its object into execution, though there seems no insuperable obstacle to a general act, which should give to all interested one effectual remedy instead of several ineffectual ones, and which should at the same time extend to all parts of the empire.

Other enactments, instead of being *general*, are *particular*. The 31 Geo. II. c. 40. prohibits brokers in hay and live cattle from buying and selling on their own account, which the 33 Geo. II. c. 27. extends to dealers in fish. Why should brokers in these articles be subject to different restrictions from brokers in sugar, spirits, or any other commodity? The 9 Anne, c. 28., 12 Geo. I. c. 34. and 35., 22 Geo. II. c. 27., 6 Geo. III. c. 28., 14 Geo. III. c. 44. and 33 Geo. III. c. 11., have been enacted in succession to prevent combinations among coal owners, woollen manufacturers, brickmakers, journeymen dyers, silk manufacturers, certain specified classes of workmen, and manufacturers of paper. Surely it would not have been too provident to suppose, in a manufacturing country such as this, that the spirit of combination which had broken out among one set of mechanics, might afterwards show itself in others, and therefore it would have been advisable to prepare a general law which might be applicable to each case as it arose. The expediency of this was at last perceived, after much time and labour had been thrown away, and the 39 Geo. III. c. 81. was passed, and again amended by 39 and 40 Geo. III. c. 106. and extended by 43 Geo. III. c. 86. to Ireland. But in the improved state in which we now

find it, why is the prohibition against combination confined to *workmen*? Laws should be equal as well as wise, and a combination among *masters* to keep down wages is an offence just as criminal as a combination among *workmen* to raise them. That such combinations are not likely to happen is perfectly true, but this can be no justification of the omission now mentioned, in so far as the act is now obviously imperfect, which another may be required to correct, and which the addition of a dozen words would have made perfect in the first instance. To the same class may be added 82 acts relating to insolvent debtors;—106 general acts relative to the poor;—35 in the latter part of the reign of George II. and beginning of that of George III. respecting the distemper of historical notoriety, which, during that period, raged among the horned cattle;—50 relating to game;—17 to quarantine;—54 to linen and cotton manufacturers;—113 to the fisheries;—46 during the last reign to the election of members of parliament;—23 for enlarging the time for enrolling the wills of Roman Catholics, and the security of Protestant purchasers;—and 66 for indemnifying persons for not qualifying themselves for offices and employments. If the subjects, to which these

classes of acts refer, had been considered at the outset by the two Houses of Parliament, in that enlightened and comprehensive manner, which a suitable regard to their own duty and dignity demanded, it could not have been requisite to amend, repeal, and re-enact them so incessantly. The two classes of acts last mentioned so frequently occur that they particularly deserve attention. When any act is regularly renewed, it generally proves one of two things, either that the act itself is useless, or that those ought to be punished to whom the execution of it is committed, and by whom it has been neglected. The enrolment of the wills of Roman Catholics is now entirely superseded, after having needlessly incumbered the Statute book for half a century. The acts for indemnifying persons for not qualifying themselves for offices and employments, yet maintains its place in the annual list, though it appears to be still more objectionable than the other. It is no doubt intended as a check upon individuals of suspected principles, should any such insinuate themselves into stations where the oaths specified in it may be exacted, though no intention is entertained of generally enforcing them. No policy can be more dangerous. It is bad in itself and worse as a precedent. The law ought to exact

no securities from public officers but those which are as far as possible really made available, otherwise the contempt which is felt for those which are trifled with, will soon extend itself to those on which reliance is substantially placed. Least of all ought the security of an oath to be so profaned; for whenever it is either taken or omitted as a matter of course, good sense and decency alike require its discontinuance.

A third sort of acts are *temporary* instead of being *permanent*. If crops fail, seasons prove unfavourable, mercantile distress prevails, or sudden changes take place in our external relations, it has been the practice in this country to seek relief by means of acts of Parliament to continue for a limited time. Of this a few instances may be given in order to make what is here meant intelligible. During the prevalence of the distemper among horned cattle which has been already mentioned, the 23 Geo. II. c. 23. was made on a very curious subject, viz. against the killing of cow calves. Their high price at that time one should have thought would have been a sufficient cause of their preservation, and the few people that were foolish or obstinate enough to kill them, neither could nor ought to have been prevented. Views of the same sort seem to have dictated the



16 Geo. III. c. 41. giving a bounty on the importation of flax seed to Ireland, and 26 Geo. III. c. 2. and 28 Geo. III. c. 45. which prohibit the exportation of hay. It is most likely that neither of these enactments was required. The price of flax seed would naturally direct its course to Ireland, and when there was a deficiency of hay in this country, where every article of agricultural produce is usually as dear as it is any where else, no merchant of sane mind would dream of exporting so bulky a commodity. A still greater number of acts were passed to alleviate the scarcity of corn which prevailed in 1799, 1800, and 1801. The 39 and 40 Geo. III. c. 35. and 41 Geo. III. U. K. c. 13. gave bounties on the importation of oats and flour from America within specified periods. The 41 Geo. III. c. 17. prohibited the selling of bread, unless after being baked twenty-four hours: the same act c. 20. gave to the majority of the proprietors of common fields greater powers than they possessed at common law, to enable them for a certain time to cultivate potatoes;—and the making of starch from potatoes was prohibited by 42 Geo. III. c. 14. The benevolent intention of all these acts is unquestionable, and yet it would probably have shown wisdom in the legislature not to have interposed at

all, but to have allowed time and private charity to bring about a recovery, which these acts were intended forcibly to effect. Bounties on importation are invariably superfluous, for commercial speculation may be safely trusted to bring grain, or any other commodity, with the utmost celerity, to that market where they are likely to meet with a brisk demand. The selling of bread unless twenty-four hours baked, it seems impossible to prevent, from the difficulty of proving the offence, and the breach of the law must often have been more humane than its observance. The prohibition of making starch from potatoes, and cultivation of potatoes in common fields, were objects too trifling to require acts at all, and the last of them, in addition to the objections now stated to it, was also a suspension of the Common law, and of the rights of private property, which the occasion by no means justified. To the same class of statutes may be referred the 33. Geo. III. c. 3. prohibiting the exportation of grain to France, during the severe dearth which prevailed there at the commencement of the Revolutionary war; and the 48 Geo. III. c. 33. to prevent the exportation of Jesuits bark, which the French then urgently required, to stop the progress of dysentery, or some other

disorder, with which their army was then afflicted. That Great Britain had a right to make enactments of such a description is beyond a doubt; but looking at the occasion on which it was exercised, now that the moment of hostility and irritation is past, it is to be hoped that; as a great and magnanimous country, no others of so invidious a nature will hereafter find a place among its legislative records.

Only one other remark now occurs, and it applies to the whole of the local, particular, and temporary enactments which have been under discussion. They are neither regarded by the people, after they have passed, with the reverence which laws ought to command, nor observed, while passing, with that attention which their provisions sometimes merit. As they are supposed to be measures which affect only one district, one description of persons, or are to last for an inconsiderable period, their progress is rarely watched by members of Parliament with a just degree of jealousy; and provisions are suffered, with unaccountable facility, to receive the sanction of the legislature, which are afterwards found to be in direct opposition to the clearest maxims of common law and the general interests of the country.



4. A fourth cause of the increased size, if not of the number of acts of Parliament, is the negligence and unskilfulness with which they are drawn up.

On entering upon this part of the subject, it might be thought reasonable that a few instances of the most frequent and glaring faults which occur in the language or concoction of acts of Parliament should be selected, in order to substantiate the justice of the charge which has been now made. But after having opened the Statute book at many different places, it seems superfluous to undertake the task. Take up whichever volume of it you will, at whatever page it opens, and however plain the subject may be to which the enactment relates, you are overwhelmed with a degree of verbosity and tautology, of which it is not easy to speak in terms of becoming moderation, and which, with all deference to the authority for such 'damnable iteration,' is believed to be quite unparalleled in any other book. If it were not utterly impossible to entertain the supposition, one would be tempted to think, that instead of expressing its meaning with clearness, the legislature had some end to serve by involving it in the greatest possible obscurity and prolixity.

Indeed it would be unaccountable how men of such rank and education, as those which compose the two Houses of Parliament, should have so long suffered such shapeless productions to be ushered into the world under the authority of their names, unless it had been long demonstrated by experience that the most enlightened bodies frequently feel no shame in sanctioning that in their collective capacity, for which there is not one among them would endure to be responsible in his private character.

These remarks on the language and arrangement of the clauses of acts of Parliament do not proceed from fastidiousness of taste, or admiration of grammatical accuracy, but from a firm conviction that the unnecessary multiplication of words invariably clouds the meaning it is meant to clear, and diminishes the certainty it is intended to augment. If any one species of composition exists where propriety and conciseness of expression are requisite, and where every syllable ought to be expunged which the sense does not require, it is beyond all controversy in acts of Parliament. If acts were drawn with even a moderate share of the exactness here pointed out, the provisions contained in them would be compre-

hended with infinitely greater ease and certainty than at present, and among other improvements we should be relieved from the endless repetition of ‘he, she, and they,’ ‘him, her, and them,’ ‘person and persons,’ ‘all, and every body and bodies,’ and many other pleonasms, for which the words ‘he,’ ‘him,’ and ‘them,’ without any addition, ought to be expressly declared to be sufficient substitutes, provided such a declaration were necessary. Daines Barrington has remarked, in his observations on the Statutes, p. 243, that 11 Edward III. c. 4. was probably the first Statute in which the word *man* did not include *woman*; and shows that in the Laws of Verona there was an express enactment on the subject. “Quoniam  
“ sub autoritate juris civilis perniciosè quan-  
“ doque erratur, statuimus quod in omnibus  
“ Statutis communitatis civitatis Veronæ mas-  
“ culinum genus comprehendat etiam femini-  
“ num, si illud de quo tractatur communiter  
“ se habeat ad utrumque.” Leg. Municip. Veron. 1507, p. 63. Dalrymple, in his Memorials concerning the Provincial Councils of the Scottish Clergy, *Edinburgh*, 1769, 4to. p. 26, has also remarked, ‘ From the reign of Richard the  
‘ First, words began to be multiplied; before  
‘ the reign of James the Third, the evil had

‘ increased ; it is now familiar. How the chimes  
‘ are rung in our enlightened age upon “ *any*  
“ *horse, mule, ass, cattle, coach, berlin, landau,*  
“ *chariot, chaise, calash, waggon, wain, cart, or*  
“ *carriage whatsoever,*” as if “ *every quadruped*  
“ *and carriage*” would not comprehend all par-  
‘ ticulars.’ As an example of prolix phraseology  
carried to the utmost extent of which it seems  
susceptible, the 54 Geo. III. c. 56. for the  
encouragement of Statuaries and Bust-makers,  
may be referred to, which is the more liable  
to censure, as, both on account of the persons  
for whose benefit it was made, and because  
it is an amendment of a former act which it  
declares to have been insufficient, it might  
have been expected to be more than usually  
perspicuous. It runs in the following terms:—  
‘ Be it enacted, &c. that from and after the pass-  
‘ ing of this act, every person or persons who  
‘ shall make, or cause to be made, any new and  
‘ original sculpture, or model, or copy, or cast  
‘ of the human figure, or human figures, or of  
‘ any bust or busts; or of any part or parts of the  
‘ human figure clothed in drapery or otherwise,  
‘ or of any animal or animals, or of any part  
‘ or parts of any animal combined with the  
‘ human figure, or otherwise, or of any subject  
‘ being matter of invention in sculpture, as of

‘ any alto or basso relievo, representing any of  
‘ the matters or things hereinbefore mentioned,  
‘ or any cast from nature of the human figure,  
‘ or of any part or parts of the human figure,  
‘ or of any cast from nature of any animal, or  
‘ of any part or parts of any animal, or of any  
‘ such subject containing or representing any  
‘ of the matters and things hereinbefore men-  
‘ tioned, whether separate or combined, shall  
‘ have the sale, right, and property of all and in  
‘ every such new original sculpture, model,  
‘ copy and cast of the human figure, or human  
‘ figures, and of all and in every such bust or  
‘ busts, and of all and in every such part or parts  
‘ of the human figure, clothed in drapery or  
‘ otherwise, and of all and in every such new  
‘ and original sculpture, model, copy, and cast  
‘ representing any animal or animals, and of all  
‘ and in every such work representing any part  
‘ or parts of any animal combined with the  
‘ human figure or otherwise, and of all, and in  
‘ every such new and original sculpture, model,  
‘ copy, and cast of any subject being matter of  
‘ invention in sculpture, and of all and in every  
‘ such new and original sculpture, model, copy,  
‘ and cast in alto or basso relievo, representing  
‘ any of the matters or things hereinbefore  
‘ mentioned, and of every such cast from na-



‘ture, for the term of fourteen years, from first  
‘putting forth or publishing the same,’ &c.  
Had this act simply declared, ‘That after the  
‘passing of this act, every person who shall  
‘make or cause to be made any piece of sculp-  
‘ture or model being matter of invention, or  
‘any original mould or cast of any objects  
‘animate, or inanimate, or of any part or com-  
‘bination thereof, or who shall make any origi-  
‘nal copy of any such sculpture, model, mould,  
‘or cast, shall have the sole right and property  
‘to and in the same for the term of fourteen  
‘years from first putting forth or publishing  
‘the same,’ &c. it would have been a great deal  
shorter, and have expressed what appears to  
be its meaning more distinctly. On this point,  
however, it is necessary to speak with caution,  
for in spite of the multitude of words with  
which it is loaded, one can hardly be certain,  
however often it may have been read, whether its  
meaning has been fully comprehended. There  
are no fewer than three questions which it  
leaves in considerable ambiguity: 1stly, whe-  
ther a sculptor who invents a statue, and makes  
casts from it of the same size, has such casts  
protected against imitation for fourteen years.  
2dly, whether if a sculptor or moulder makes  
an exact resemblance of an ancient theatre or

temple, which has never been copied before, reduced to a tenth of the real size, such copy or work of invention, is within the statute? And 3dly, whether it is unlawful again to reduce the copy, or only unlawful to make and vend a fraudulent fac-simile of it?

Perhaps more has been said on this act than was absolutely necessary; but it was very desirable on the one hand to show by a full examination of the first example that presented itself, how unavoidably prolixity of language impairs instead of promoting the certainty of the meaning; and on the other, to guard against the supposition of recommending perspicuity or brevity at the expense of security. Another striking instance of the carelessness with which acts of Parliament are drawn, occurs in 56 Geo. III. c. 86. respecting aliens. By the 1st, 2d, and 3d sections, aliens neglecting or refusing to obey proclamations for departing the realm, may, by warrant of the Secretary of State, be committed to a messenger, in order that they may be conveyed out of the realm; but if such secretary has been informed that an excuse or reason for such neglect or refusal is alleged by the alien, he shall suspend the order till the same has been heard before the Privy Council. But by sect. 10. certain



magistrates and officers of state, merely on suspicion that an alien is a dangerous person, may commit the alien ; and one of the principal Secretaries of State, by warrant under his hand and seal, may direct such alien to be ordered out of the kingdom, without being heard before the Privy Council or any other person. The provisions of the act abundantly testify that no unnecessary severity was intended, but all who set a proper value on the character of the laws of their country will allow, that in the eyes of strangers, and especially where these strangers are themselves concerned, its legislative enactments should as little as possible be liable to the charge of unreasonableness or injustice, and one should think it must strike them as hard, that an alien merely suspected should be treated with greater harshness than one who has actually contravened or refused to obey a royal proclamation. The whole act bears marks of haste and unskilfulness.

If it is allowed to be true, that acts of Parliament really are framed in the faulty manner now described, it signifies little to the subjects in what way the evil arises ; whether they are prepared by the solicitors to the different public boards, equity draftsmen, or special pleaders ; and whether it happens that want of time, skill,

or adequate remuneration is the cause of their defective construction. It is no consolation to a state when suffering under any particular grievance, to be informed of the manner in which that grievance has arisen. If Statutes are not properly drawn, then greater care and skill ought to be employed for that purpose. Blackstone, vol. i. p. 181. informs us that in the time of Henry V. in order to prevent mistakes and abuses in the manner of wording acts of Parliament, which according to the practice then prevailing, were all drawn up at the end of the Session, the draughts of them were prepared by the Judges. Something may occasionally be learnt from the usages of times essentially different from our own; and the employment of the Judges to put the result of their legislative deliberations into suitable words and method, shows the importance which even at that early day they attached to such a task.

5. The last and most powerful cause of the increase and imperfection of acts of Parliament arises from an excessive love of legislation. Weak men possessing seats in either House are so apt to be pleased with their own noise and bustle; there are so many applications made to Members of Parliament either to introduce or support bills for the benefit of districts or bodies

of men, with whom they are connected; and there is something so apparently meritorious in an attempt to relieve the distress of our fellow-subjects, however inefficacious or preposterous the remedy may prove, that to abstain from introducing Bills, which are either injudicious in themselves or framed with a view to promote private interest, requires no ordinary exertion of integrity and understanding. It is not therefore surprising, though on that account not the less lamentable, that unceasing attempts should be made to alter and extend the restraints of law, by those very persons who should be the most aware, that of all the excesses which a free government can commit, an excess of legislation is the most mischievous. Indisputable and important as this principle is, a reference to the Statute book will show, that it has never been more frequently or palpably disregarded than in recent times. It would be tedious to wade through all the acts where this violation is perceptible. The following specimen of *regulating Statutes*, the whole of which were passed in the reign of his late Majesty, will sufficiently answer the purpose. The 8 Geo. III. c. 17. for regulating the wages of tailors; 13 Geo. III. c. 68. empowering magistrates to regulate silk manufactures; 28 Geo. III. c. 7.

to improve gold and silver lace making; 28 Geo. III. c. 17. for the better regulation of making ounce thread; 32 Geo. III. c. 44. for regulating the wages of silk weavers; 36 Geo. III. c. 60. for regulating the making of buttons; 36 Geo. III. c. 85. for regulating corn mills; 44 Geo. III. c. 69. for regulating the linen manufacture of Ireland, and c. 87. of the same act for regulating the cotton manufacture of England; 46 Geo. III. c. 59. regulating the packing of butter in Ireland; 49 Geo. III. c. 109. regulating the woollen manufacture; and 53 Geo. III. c. 46. regulating the butter trade of Ireland. To the same class may be referred 28 Geo. III. c. 57. followed by several others, limiting the number of persons carried on the outside of stage-coaches; and an act in the beginning of the same reign, the exact date of which is not recollected, to prevent the depasturing of forests, commons, and open fields with sheep and lambs infected with the scab or mange; and 43 Geo. III. c. 56., 56 Geo. III. c. 114. and 57 Geo. III. c. 10. regulating the number of persons to be taken on board any vessel from this country to America according to its tonnage. It is believed that a bill for rendering steam-boats more safe for passengers was thrown out in the House of Lords two years

ago. The Climbing Boys bill was thrown out in the same House in 1819; and Mr. Bennett immediately announced in the House of Commons his intention to introduce a bill for *regulating climbing*, as he could not procure its entire abolition. Another has since been introduced for the *regulation* of country bakers; and a third has been printed, the object of which is to enable grand juries in Ireland to present a sum sufficient to purchase a sword and dress to secure proper respect for the person of the coroners of baronies in that country. Two others, one for providing board and lodging for certain sorts of apprentices, and another for regulating the numbers on clocks and watches, actually passed the Commons, but were fortunately stopped in the House of Lords.

It would answer no purpose to enter more minutely into an examination of very recent proceedings of the legislature, though it would be difficult to select a session in the whole range of parliamentary history in which so great a number of public bills have been introduced, especially into the House of Commons, the members of which seem to have almost entirely released themselves from that respect and restraint which they used to feel when acting in the face of an assembly as well cal-



culated to repress folly or presumption as any assembly which was ever called together. Many bills which are introduced bear unequivocal marks of never having been maturely considered, either in their immediate or remote effects. They make their appearance in the House nobody knows how or wherefore, and it depends chiefly upon the chance of their attracting or escaping observation whether they are lost or carried. It does not now seem to enter sufficiently into the contemplation of any member of parliament, that his reputation either is or ought to be materially affected by the character of the bills which he proposes.

Having adverted to the nature and causes of the excessive and careless sort of legislation to which this country is now subjected, it is impossible not to deprecate either its extension or continuance. The shape in which it most frequently displays itself is that of *regulating acts*, which involve almost every objectionable quality that public laws can possess. They begin by trenching more or less on the liberty of the subject, which nothing but great and unquestionable general good can justify, and end in introducing some unmeaning forms, while their substantial enactments remain perfectly nugatory. They endeavour to ensure that fair deal-



ing between buyer and seller, master and servant, which they neither can nor ought to accomplish. For if they did, they would destroy that circumspection which every person is bound to exercise in the management of his own affairs: and destroy the simplicity and equality of the law of the land, by subjecting one trade or occupation to restraint, while another, where there is the same reason for interference, remains unfettered. It is besides as palpable as demonstration can make it, that if Parliament in its parental kindness were to frame a separate set of rules for the regulation of every craft or employment exercised in this rich and commercial country, it would make our municipal institutions complicated beyond endurance, and produce infinitely more inconvenience, fraud, and oppression than they were intended to remove. On the ground therefore of acts of regulation being mischievous in themselves, and affording encouragement to others of the same sort, an insurmountable objection presents itself to the whole order, not excepting even that which was introduced last year by Sir Robert Peel in favour of children employed in cotton manufactures, though it is by far the strongest case for interference which has been yet noticed. The laws protecting passengers

by ships and coaches are not less impolitic. If the Common law was insufficient to ensure the safety of the subject, why should not a general enactment have been made, declaring that the owners of conveyances, whether by sea or land, should be bound under certain pains and penalties to carry passengers in safety to their destination, according to the express or implied conditions entered into between the contracting parties? This would have been quite sufficient without prescribing the manner in which it is to be done, to which experience shows that little or no attention ever will be paid. The laws respecting passengers to America are particularly worthy of attention, as illustrating what will always happen when Parliament exceeds its proper province. These acts, under which an oppressive conviction took place in the end of 1821 or beginning of 1822, for an offence within the letter of them, though foreign to their object, were occasioned by the insufficient accommodation afforded to passengers, which, in all cases where emigration prevails, will now and then inevitably happen. By the first act on the subject, the captain was only allowed to take one passenger on board for every  $2\frac{1}{2}$  tons of the ship's burden. These  $2\frac{1}{2}$  were by the second act increased to 5,

and by the third were reduced to  $1\frac{1}{2}$  for every adult or for 3 children under 14. So that in 1817, a ship-master was permitted to take on board 10 children under 14, where the year before he was permitted to take only 1. Which of these regulations are the best? Some of them must of necessity have been bad, and all of them together have probably aggravated the very distress they were meant to alleviate. The same remark applies to the acts in favour of Saving Banks. When these institutions first attracted notice, greater expectations were formed of their utility, than their history will probably be found to justify. Among their other patrons was the late Mr. George Rose, who mainly contributed to the enactment of the 57 Geo. III. c. 130. which prescribes a complete code of management, to which every Saving Bank is obliged to conform. Greater disservice it is feared could not have been done to them. The utmost that was required was, to put them on the same footing on which benefit societies were placed by 33 Geo. III. c. 54. sect. 10. giving them a preferable claim on the effects of any officer of the society, who died or became insolvent with any of the society's money in his hands. To do more for them was worse than to let them alone altogether. No-

thing so much weakens the exertion which is made or interest which is felt for the success of any establishment, as to take the management of it out of the hands of those to whom it ought of right to belong; and the discussions which arise among the members of such a society, when left to its natural course, respecting its direction and the disposal of its funds, are among the chief springs of that industry and economy by which the savings were originally accumulated. Indeed it is generally true, that no greater mistake in legislation can be committed, than to treat the labouring or any other classes of society, as incapable of the superintendence of their own concerns. If left to themselves, they conduct them with quite as much prudence as their superiors; and like them when guilty of carelessness, imprudence, or vice, they ought to feel the full consequences of their own misconduct.

The opinion now advanced will perhaps not meet with the approbation of some whose private character is as respectable as the motives of their public conduct are generous and disinterested; but it is not easy, on any sound principle of policy, to justify the spirit of those laws, of which some have passed, and others are yet in contemplation, by which the com-

forts of bankrupts, felons, and disorderly persons are to be increased and their punishment mitigated, and certain employments deemed noisome or unhealthy are to be forcibly abolished by legislative interference. Should the attempts that may be made to produce reformation by kind treatment and the allowance of additional comfort ultimately succeed, every friend of his species ought unfeignedly to rejoice at it; but that society should become amended, exactly according to the degree in which the rigour of the law is relaxed, and those who are amenable to it become hardened and regardless, is an expectation to which neither reflection nor past experience affords any countenance. In expressing apprehension, however, of the consequences of a rapid departure from the wholesome austerity of our ancient laws on the one hand, it should be clearly understood that indiscriminate and extreme rigour is by no means recommended on the other. Judicious experiments, and the change of times, may show considerable alteration or mitigation of them to be desirable and attainable, but none can be surprised that a certain degree of alarm should be excited, when it is observed that those by whom such alterations are most zealously promoted are persons more remarkable for purity of in-



tention than extent of understanding, and who, instead of confining themselves to private acts of charity, where unlimited scope may be allowed to the exercise of kind affections, assume the functions of statesmen and legislators, where such feelings are peculiarly apt to mislead them. Of all innovators in law, those who by way of distinction are denominated benevolent men, are the most dangerous because the most popular; while he who aspires to the character of a sound legislator, must be content to be one of the most ill-requited of all the benefactors of his country. Like the influence of winter on the vegetable world, the salutary and fructifying nature of his measures will in due season be disclosed in their beneficent effects, but the appearance they present at the moment of their adoption is almost invariably severe and uninviting; and those who delight in the sudden and transient changes produced by a more artificial and imposing system, are tardy and reluctant to do justice to their wisdom. His acts are all of a simple and unpretending character, and he displays no quality calculated either to attract the admiration of the great, or win the affections of the vulgar. He neither forces new branches of trade, nor supports any declining manufacture, and however acutely on



many occasions he may feel as a man for the partial or general distress of the country, his duty as a statesman may compel him to withhold any legislative assistance. He is required to protect the rights of the unpretending against the solicitations of the importunate; to deny favours to those with whom he is in habits of intercourse and friendship, in justice to the claims of those whom he does not know, and in whom he feels no interest; to resist the most urgent demands of individuals or public bodies, when in opposition to the general good; and as a last sacrifice, to renounce all views of present personal renown, by preferring sure, steady, and imperceptible improvement to all the glory which ephemeral prosperity could reflect upon him.

Even in seasons of scarcity, local calamity, or commercial difficulty, the pressure can scarcely ever be so severe as to justify the interference of the legislature. If such cases occur, it is only on those occasions when the safety of the whole political fabric is endangered, and even then consequences generally result from it, which the most penetrating understanding could not have predicted. More striking instances of this cannot be given than the 43d of Elizabeth for the relief of the poor, and the Bank Restriction Act in 1797. It is possible

that these laws, at the time they were passed, may have been absolutely necessary. On that point no opinion is here expressed. They are only quoted to show, that unless forced upon us by the most direful necessity, there is hardly any temporary exertion or suffering which it would not have been wiser to undergo, than to pass laws which counteract the main springs which govern human conduct. The first of these laws, which is suggested, by the able author of the Letter to Mr. Peel, to have arisen from extreme distress, occasioned by the temporary inadequacy of the price of labour, has in the issue caused more legislation, litigation, national impoverishment, and individual misery, than perhaps any single law which ever was promulgated. The effects of the second have, in some respects, disclosed themselves still more rapidly. During the 21 years it has existed,—including the acts for restricting cash payments by the Banks of England and Ireland,—the suspension of the prohibition of the negotiation of promissory notes under a limited sum,—the permission to bankers in Scotland to issue notes under a certain amount,—those respecting Bank tokens, and the selling of the gold coin of the realm for more than its nominal amount in Bank notes,—all of which owe their origin to it, the Bank

Restriction act has already given birth to no fewer than forty-six others. The full developement of these two enactments has probably not yet taken place, but the effect they have already had on the affairs of the country, and the laborious investigations they have occasioned both in parliament and in print, forcibly calls to mind Livy's observation of the declension of the Roman people, '*deinde ut magis magisque lapsi sint, tum ire cœperint præcipientes, donec ad hæc tempora, quibus nec vitia nostra nec remedia pati possumus, perventum est.*'

Having said so much of the love of legislation, and the degree in which it at present prevails, it may be observed, before quitting the subject, that the evil could not have arrived at the height it has now reached if the two houses of parliament had faithfully done their duty. No wish is entertained to undervalue the extraordinary talents and industry displayed by many individual members of which these assemblies are composed, but there is too much ground for suspecting that the business of legislation is usually conducted with a degree of carelessness which is utterly indefensible. Many bills of much general or local importance pass without notice altogether; and when they do attract any

interest, what is called *the principle* of the bill is usually the only part of it which members condescend to discuss, leaving any blunder or unconstitutional clause which may have found its way into its details to be discovered out of doors, or when it afterwards comes to be scrutinized in courts of law. It was mentioned by Lord Stanhope, in the House of Lords, on the 6th of April, 1814, that by a particular statute the punishment of fourteen years transportation was to be inflicted for a particular offence, and that upon conviction it should be divided between the king and the informer. Lord Stanhope's statement is substantially correct. At the time these observations were first published, I had not discovered the act in question, which has been since pointed out to me. It is the 52 Geo. III. c. 146. called the Register of Baptisms act, and the fourteenth section imposes the punishment of *transportation for fourteen years* for making false entries in Register Books of Baptisms; while by the eighteenth, 'one half of all fines or penalties *to be levied* in pursuance of this act *shall go to the person who shall inform or sue for the same, and the remainder shall go to the poor of the parish.*' No *fine* whatever is mentioned in the act, nor yet *penalty*, unless transportation can be reckoned so, yet even if it could in legal

acceptation be deemed a *penalty*, as it is not one *which can be levied*, the whole section becomes inoperative and unnecessary. It is well that no other epithets can be applied to it, for if it had not been for the slight incongruity of language which has been pointed out, the literal construction of this act would have been, that every person convicted of making a false entry would have escaped punishment altogether, and the fourteen years transportation intended for him, would have been divided between the informer and the poor of the parish. It is easy to point out the source of the blunder. As the bill originally stood, the punishment imposed must have been a fine or a penalty, for which, in a late stage of its progress, some member unexpectedly substituted transportation, without any person taking the trouble again to look over its details, in order to discover what subsequent alterations had by such an amendment been rendered necessary. This act also makes Copies of Registers of greater importance than the originals themselves, for copies must be on parchment, while the originals may be, and usually are, on paper : one churchwarden's signature is sufficient to authenticate the signature of the minister, but the signature of two churchwardens is required to send a letter postage free to the



Registrar for the diocese, on certain subjects specified in the act: the printed registers allow the same space for all names, whether the person has one name or four, and each division is numbered, so that any omission or repetition affects all succeeding entries in the volume, and no space is allotted for specifying when the person was born, though he may have been baptized many years after his birth. In order still more conspicuously to blazon an act which contains a greater number of absurdities than any other which perhaps ever found a place in Statutory law, it is prefixed to every new Register Book which may be required for the use of any parish throughout the kingdom.

It is owing to the same sort of supineness, that the bill for facilitating dispatch of business on the Equity side of the Court of Exchequer passed in silence through both houses as a mere *regulating act*; though, considering the main provision contained in it, and the precedent it may afford for future alterations in the Courts of King's Bench and Common Pleas, it certainly deserved as much consideration as the bill for appointing a Vice Chancellor, which created such keen and protracted discussion. What was here anticipated has since actually taken place, and, in the latter part of the



session of 1819, a bill was introduced into the House of Commons to regulate the Courts of King's Bench and Common Pleas, which if it passed, would have introduced, with reference to motions for new trials, one of the most important changes into these courts which they have undergone since the time of their institution. It was however withdrawn for that session, and has not again been brought forward. The 53 Geo. III. c. 160. respecting Unitarians, crept through in the same manner. This is not the place to bring the principle of the bill into question; but it may be permitted to observe, that it seems singularly inconsistent, that the Test Act should remain unrepealed, and the claims of the Roman Catholics produce almost every year such lengthened and animated debates in parliament without being granted, and yet that this act, which is perhaps more dangerous to various institutions in Church and State than both of them put together, should have been suffered to pass through the two houses of parliament at so late a period of the session as the 20th of July, apparently unnoticed or disregarded, the Archbishop of Canterbury and Bishop of Chester simply declaring, when it was read the third time in the House of Lords, 'that it was not called for by any pains or penalties sought to be inflicted by

‘ the Church of England.’—*Hansard’s Debates*, vol. xxvi. p. 1222. The last instance of negligence in passing Acts of Parliament which shall be adduced is the following. By 10 Geo. III. c. 18. it is enacted, that all persons stealing dogs, or selling, buying, or detaining dogs, knowing them to be stolen, shall, for the first offence, forfeit a sum not exceeding £30, nor less than £20, upon conviction, and until such sum is paid, be committed to the common gaol or house of correction; and shall, for the second offence, upon conviction, forfeit not less than £30, nor more than £50, upon conviction, and until paid be committed to the common gaol or house of correction, until such sum shall be paid; ‘ and ‘ such justices shall also order the said offender ‘ *to be publicly whipped within three days after such ‘ commitment*, in the town in which such gaol or ‘ house of correction shall be, between the hours ‘ of twelve and one of the clock.’ And then the 4th section enacts, ‘ That if any person ‘ thinks himself or herself aggrieved by any ‘ thing done in pursuance of this act, such person may appeal to the justices of the peace, ‘ at the next quarter sessions of the peace, to ‘ be held for the county or place where such ‘ cause of complaint shall arise, *and within four ‘ days after the cause of such complaint shall have*

‘ *arisen*, &c. such appellant giving, or causing, to be given, fourteen days notice at least, in writing, of his or her intention to bring such appeal, &c. to the persons whose acts are complained against.’ The records of Tartarus itself present no precedent of so outrageous a violation of justice. When the presiding magistrate, in these

————— ‘ *durissima regna*  
‘ *Castigatque auditque dolos*,’ ———

he seems to think it a sufficient abuse of authority to make the sentence precede the trial, and there the iniquity of his proceeding ends. But to insult the complainant with an appeal against whipping, eleven days and perhaps eleven weeks after he has been whipped, provided always he ‘ should think himself aggrieved,’ is a refinement of oppression which it is to be hoped no modern Rhadamanthus, except an English justice sitting in judgment on a dog-stealer, ever had the power of inflicting.

One cannot help perceiving that much of the precipitation and carelessness here complained of, is caused or countenanced by the practice of the ministers of the crown. No reflection is here intended to be cast upon any individual or particular administration. The evil has struck

its roots too deep to have been produced by any one set of men, and nothing but a considerable improvement in the management of public business can remove it. Official men in this country who fill posts of high trust and confidence have so many duties to perform, especially during the sitting of parliament, that many of them must be performed indifferently, and that of legislation is usually the worst. A bill is scarcely ever brought in by any department of the government until it can be no longer postponed or avoided, and is then passed so hastily that sufficient time for the examination of it is not afforded to the legislature. Should any member of either house ask why any particular bill has not been proposed sooner, the reply usually is, that it will be time enough to legislate when the occasion calls for it; and when at last a call is made by the occasion, the excuse for precipitation is, that unless it is immediately passed, the public service must suffer. If no glaring defect is discovered in its construction, it is dispatched as a matter of ordinary business; if not, another act is passed the same or following year, to repeal, suspend, or amend it. In this way those who are in offices of responsibility hold forth an example of hurry and negligence, which those who have less excuse are not slack to follow;

and if those who take charge of bills are in haste to bring them in, the house is frequently not less so to get them out again. The correction, amendment, or rejection of legislative measures is often thought a task too tedious and inglorious to be undertaken by those very persons who prodigally exhaust every faculty of mind and body in the examination and prosecution of the most contemptible party question. In the House of Commons in particular, it is well known that towards the conclusion of the session, it is possible for a member who is astute in parliamentary practice to carry a bill almost through the house before it is known to have existence; and that the Upper House is the only place, especially if it be a local or private one, where it has the smallest chance of being candidly examined. In this point of view, the latter branch of the legislature is of incalculable value, and has on many occasions acted as a flood-gate against the tide of legislation which is now rolling so impetuously through the House of Commons. Bad as the state of our laws is, if it had not been for this interference, it would have been still more deplorable. In observing the bills which are in progress, it is supposed to be the duty of the Lord Chancellor to be particularly attentive, and from the vigilance with which the



present possessor of that exalted office, the late Lord Stanhope, Lord Lauderdale, the late Duke of Norfolk, and some others, have displayed in that respect, they have rendered distinguished though unostentatious service to their country, and meritoriously discharged the trust which, as hereditary counsellors of the crown, their sovereign has confided in them. What has just been said, is only intended as an acknowledgment of the gratitude which is owing by the country to a kind of merit which has hitherto neither been known nor appreciated as it ought to be, and which, as peculiarly becoming the dignity of the House of Peers, it would be desirable to see more generally displayed by that distinguished body. To the class of noble persons now enumerated, few have yet appeared who are either qualified or anxious to succeed, and if none should have come forward at the time when they become extinct, then one of those unperceived changes will have taken place which are gradually passing on all human institutions, by which its efficiency is lamentably altered, though its structure may remain unchanged.

Nothing now occurs to be added to the reflections which have suggested themselves on the present size of the Statutes and Reports in courts of law, and on the rate at which they are



increasing. It is to be hoped they have been communicated without offence, without exaggeration, and without using any expression tending to bring into disrepute either the law or the legislature. Nothing at least could have been more foreign to the wishes and sentiments by which they were dictated. The regular series of our acts of parliament and the most important judgments which have been given in our courts of law, form incontestably the most splendid and complete records of their respective kinds which any country, either in ancient or modern times, has ever yet possessed. It is a sincere, if not an enthusiastic admiration of them which has called forth these observations, with a view to remove the ancient imperfections, or at least to prevent the spread of the modern abuses which deform them. No plan, especially with regard to reports, has been proposed for the rectification of the evils pointed out. Precipitate proposals of this sort more frequently retard than promote their object, and the first sure step to practical reform is to excite candid inquiry into the nature and extent of the grievance sought to be reformed. On one point however it is not difficult to pronounce. Any alteration that might be adopted with reference to reports, would be preferable to the

journals of proceedings in courts of law and equity, which are constantly issuing from the press : and in case no better plan could be devised, it would be felt as a relief again to have recourse to Lord Coke's ' four discreet and ' learned professors of the law,' to report cases, rather than continue fourteen, who are not likely to be all learned professors, and who would injure their employment if they exercised discretion. With respect to amendments in the law, and a moderate but dignified controul over all measures in which the law is concerned, there is one class of persons peculiarly qualified to benefit their country, from whom more might be expected than they have ever yet performed. Those who are here meant are ex-chancellors and judges, many of whom retain complete possession of their powers, and whose knowledge of business and experience of the world would enable them during a few years of retirement to confer more permanent benefit on our system of jurisprudence than all their preceding course of active service. But from whatever cause it arises, whether from that necessity for repose which generally succeeds constant and severe exertion ; whether habit disinclines them to an alteration of rules and practice with which they have become familiar ; or whether it is that age

freezes the activity and energy required to propose or execute any amendment however cautious, the fact itself is indisputable. ‘Young men,’ says Lord Bacon, ‘care not to innovate, ‘which draws unknown inconveniences; use ‘extreme remedies at first, and that which ‘doubleth all errors, will not acknowledge or ‘retract them. Men of age object too much, ‘consult too long, adventure too little, and re- ‘pent too soon.’

Neither has any proposal been offered in the course of the remarks on the size and intricacy of the Statute-book, by which these blemishes might be removed. It is possible that some such general revision or arrangement of it as that which was contemplated by Lord Stanhope may hereafter be adopted with advantage, but it would at present be rash to express any sanguine expectation on that head. A less adventurous course might lead more safely and expeditiously to the desired object, and instead of throwing the Statute law all at once into a new form, it might be better to remould it gradually, by taking care that the enactments which may hereafter receive the sanction of the legislature, should be as *permanent, general, and intelligible as possible*. If this rule in drawing up acts of parliament were rigidly observed, and

none but such as possessed this character were suffered to pass into law, all well-grounded complaints against acts of parliament would quickly vanish. The perpetual enactment, suspension, repeal, and re-enactment of laws is equally discreditable to the legislature and grievous to the subject. A stronger instance of this cannot be given than the Irish Grand Jury Presentment Bill, which is evidently one of the most important measures ever attempted for the amelioration of that country, and about which no vacillation after it was once determined on ought to have been exhibited. The bill, however, was passed in 1817, suspended in 1818, till the end of that session of parliament, and notice of a further suspension again given in the beginning of 1819. It is thus left in doubt how many more suspensions may yet take place before it receives the royal assent, or whether the bill may not eventually be abandoned. On *particular* enactments instead of *general* ones, an opinion has already been expressed upon the lamentable practice of legislating in detail instead of in the gross. A statute can scarcely be too general in its application to the subjects to which it relates, or too complete a body in itself, so as to supersede all reference to antecedent ones. By this means,

whenever the subject of Insolvent Debtors, Fisheries, Election of Members of Parliament, Quarantine, or any such general head of law, came under consideration, the various provisions which lie scattered in the Statute-book would be repealed, and one systematic enactment substituted in their stead. This has to a certain extent been done in the Revenue Consolidation Act, 43 Geo. III. c. 69.—28 Geo. III. c. 38. for consolidating the acts respecting the exportation of live sheep and unwrought wool, and 52 Geo. III. c. 143. for reducing into one act the offences against the revenue punishable with death. The game laws, which have so often and always ineffectually been brought before parliament, afford one of the best possible opportunities of exemplifying such a plan of legislation. The subject of game is one where the various subsisting enactments are numerous and intricate, in which no precipitation is required, and where a member of parliament possessed of judgment and industry would do great credit to himself and benefit to the country, by incorporating the whole of the existing provisions on that head into one act, which would then be submitted at once to the consideration of the legislature. The bill introduced by Mr. Brand three or four years ago,



disappointed the expectations it had raised. Even if it had passed, it would have left all the regulations about poaching, and other abstruse branches of that division of the law, in the same confused and unsatisfactory state in which we now find them.

It is unquestionably true, that it would require much skill and caution to prepare such general acts, so as neither to overshoot nor fall short of the object aimed at ; but this instead of being a disadvantage, would in reality be one of the greatest benefits which would follow from the introduction of such a kind of laws as have been here described. Longer time and greater capacity would be required to prepare them : a comprehensive and exact view of the subject would in every instance be requisite ; and an effectual stop would be put to the enactment of laws as temporary expedients, which is the chief cause of all this legislative mischief. If only one of such acts passed every single or alternate session, it would be a decided approach towards the attainment of the end in view, and the Statute Law, like a salubrious but neglected spring, would gradually dispel the impurities by which it had been corrupted or disturbed, and become more transparent and invigorating as it flowed. Only do not let diffi-



culties be magnified by those who have neither the power nor the will to contrive or encourage any plan of improvement, and delight in repressing every attempt at amelioration, without either trial or examination. If any thing at all is done it will be hailed with satisfaction, provided it really tend to simplify and methodize the laws under which we live, and to continue the practice of them in the rank of a liberal profession, which, if things go on as they have lately done, it is impossible it can long continue. At the same time the task is so difficult and important, that it would be matter of regret if it should fall into the hands of inadequate and bold projectors, who glean from every code, either ancient or modern, whatever suits their pre-conceived notions, without reference to the existing institutions or circumstances of the country, and who suffer themselves to be biassed by the declamatory speculations of the daily press, which are too often delivered in a tone of dogmatism and arrogance ill-suited to the research and reasoning by which they are supported. That the feeling of the mass of the public, when steadily and unequivocally manifested through any channel, deserves respectful and anxious attention there can be no dispute; but the history of recent times affords abundant

testimony, if any such were wanting, that the rapidity and caprice with which popular opinion shifts about, entitle it to little weight in any case, and on questions of law to less than on any other. Those upon whom the difficult and important duty of superintending legislation naturally devolves, are men of acknowledged rank and established reputation, whose minds have been enlarged by reading, strengthened by observation, and corrected by experience. It is to them the preceding observations have been principally addressed; and if they should have any effect in directing their attention to a subject in which the reputation and prosperity of the country are so deeply interested, they will have fulfilled the purpose they were intended to serve.

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ON  
THE CRIMINAL LAW  
OF  
- ENGLAND.

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WE live at a period when the human mind is every where acting under a powerful impulse. Whatever difference of opinion may be entertained respecting the causes from which it proceeds, or the consequences to which it leads, the existence of the fact itself admits of no dispute. Wherever our personal observations or the information derived from others enable us to extend our view, we find mankind restless and dissatisfied, and straining every faculty of mind and body for the amelioration of their condition, to a degree of which no former age can furnish an example. Nothing can more strongly

illustrate this than the inefficiency and contempt into which those countries have fallen, which do not keep pace with the general progress of improvement; while in every other fresh channels of communication are perpetually opened, more efficacious means are adopted for securing the continuance of natural and acquired advantages, and the resources of art are exhausted in devising means for employing in the most profitable manner every quality of the soil or substance which may be found beneath its surface. Nor has this display of energy been confined to external nature alone. It has been exerted no less successfully on mind than on matter, and in those sciences which treat of man as a rational, moral, and social being, more rapid progress has been made, and a greater revolution of opinion has taken place, within the last half century, than for some thousand years preceding. The attachment shown to old manners and customs, as well as deference yielded to station and authority, is every day diminishing; and the public is now so much accustomed in every instance to trust implicitly to its own judgment of what is right and wrong, that it submits reluctantly to any other species of controul. All classes of society are as tenacious of their own rights as prompt

to question those of others, and can with difficulty be brought to admit the most intricate or comprehensive point of literature, morality or policy, to be placed beyond the sphere of their understanding. If the course of events creates discussion about any matter in which the community at large is interested, neither length of acquiescence nor strength of legal title, can protect it from full and uncereemonious investigation; and if any received or established doctrine, law, or usage, has once become the object of dispute, there is no other way in which the attack can effectually be repelled, but by showing that it is not only just or expedient in a general point of view, but that it is so under the particular circumstances in which it may happen to be called in question. This spirit of universal inquisition is one of the most striking characteristics of the present day, and requires to be anxiously and dispassionately observed by all who govern human affairs as well as those who meditate upon them. It is openly or secretly pervading every quarter of the civilized world, and the most penetrating understanding can form no conjecture of the purposes it may be destined to effect, before its appointed course is finished. Instead of striving to retard or arrest its progress, which



no human power or policy is able to accomplish, it would be wiser for those to whom the superintendence of public measures is intrusted, to endeavour to confine it within reasonable limits, and direct it to the attainment of practicable objects.

Few subjects have, for the last fifty or sixty years, engaged on the continent of Europe a larger portion of the inquisitive spirit which has been mentioned, than that of criminal jurisprudence. It is only within a recent period that it has become the object of much reflection in England, and some circumstances may be pointed out to which this inattention has to a considerable degree been owing. The abolition of torture, publicity of procedure, and general impartiality of those who presided in courts of justice, all conspired to confer upon the criminal law of England an early and decided superiority over that of all its neighbours. This very circumstance appears to have proved the chief obstacle to its advancement in after-times. The country, instead of promoting the progress of an improvement so auspiciously begun, sat down satisfied with what had been already done, and cannot be said to have made a single effort for that purpose during the whole of the eighteenth century. It is true indeed that

various committees of the two Houses of Parliament were, within that time, deputed to investigate particular matters connected with criminal jurisprudence, but the result of their labours was trifling; and even those which sat in 1750 and 1770, which may be considered as the most efficient of the whole number, neither produced nor recommended any material practical improvement. About the last of the two periods now mentioned, a variety of treatises on crimes and punishments began to be circulated in all parts of the continent, and entirely new codes of penal law were promulgated in some of the most considerable states comprised within its limits. It is somewhat singular that neither this activity of discussion and legislation, nor the popularity both at home and abroad which at that time followed the labours of Howard on a kindred subject, seem to have created in the minds of the people of this country, the least desire for the simplification or correction of any part of their own criminal law. For forty years after this date it continued unchanged either in form or substance, unless a new tax or fresh variety of an old offence, helped to swell the catalogue of clergyable or capital felonies, occasioned by the extension of trade or alteration in the state of

society. At last Sir Samuel Romilly became the means of rousing the public from the languor in which it had so long remained. The bill which he introduced into the House of Commons in 1808, for abolishing capital punishment for *stealing privily from the person*, and the debates which took place upon it, began that course of discussion which has never since been discontinued. From this period the current which had hitherto run too strong in favour of every part of the existing laws, in some degree changed, and that impetuous and determined zeal which has so often led the country to transgress the bounds of prudence in the prosecution even of a virtuous cause, seems to have inspired certain excellent and indefatigable individuals with a desire by means of boundless kindness and compassion to atone for the supineness and severity of which their forefathers had been guilty. The bill which Sir Samuel Romilly introduced, was passed into a law. Three other bills were introduced by him in 1810, the object of which was to abolish the punishment of death for stealing from a shop or warehouse to the amount of five shillings; from a dwelling-house to the amount of forty shillings; and from on board vessels in navigable rivers to the same amount. The whole of these

bills were then rejected, and though the same or others of a similar nature were again brought by him into the House of Commons in 1811, 1813, 1816, and 1817, he did not live to see the provisions contained in any of them adopted. What further alterations that distinguished man intended to have effected in the criminal law of England, in case he had accomplished the measures he had undertaken, or what his general opinions on the subject of penal jurisprudence were, the public hitherto possesses no sufficient means of judging; for on every occasion on which he communicated his thoughts to the world either in speech or writing, he has expressed himself with that extreme caution and reserve, which was one of the most striking peculiarities in his character. The subject was again brought forward in the House of Commons after his death, by certain members who coincided with him in their general sentiments, and in March 1819 a Select Committee was appointed to inquire into all offences which are rendered capital by the present criminal laws. The Report made by the committee to the House was printed in November following, together with the evidence taken before them, and the documents of which they were put in possession. To the opinions contained in this

volume, a large portion of the following reasoning will be found to refer, and though much of the value which is still attached to the Report and the Evidence annexed to it must in a few years pass away, the time and circumstances in which it appeared will always invest it with some degree of interest in the eyes of all those who may in future direct their attention to the subject. It is the work of members of parliament, and executed under parliamentary authority,—comprises the most valuable collection of documents which has perhaps ever been given to the world relative to the administration of criminal law in any particular country,—and contains the first distinct annunciation of that plan of reform which certain gentlemen within parliament and their coadjutors out of it, have been for some time strenuously endeavouring to introduce into our whole penal code.

It will be the first object of the following observations, to enter into a detailed examination of the contents of this Report, and especially of those alterations of the law which it has actually recommended: then to inquire into the practicability of other alterations, which the Committee evidently have in contemplation, though they have not been specifically proposed: and last of all, to offer some suggestions



on the practicability and expediency of the arrangement and consolidation of the whole criminal law of England.

## I.

The Report of the Committee on the Criminal Law consists of four sections. The *first* relates to the *returns* or *statistical tables* produced before the Committee by gentlemen holding offices connected with the administration of this branch of law throughout the kingdom: the *second* to those existing laws which the Committee propose to repeal: the *third* to the renewal of Sir Samuel Romilly's acts repealing larceny: and the *fourth* to the crime of forgery. Some observations shall be offered on the contents of each of these four sections in their order.

1. The first section of the Report relates to the returns of commitments, convictions and executions, presented to the Committee by various public officers connected with courts of criminal jurisdiction. They relate to different parts of England, and extend to different periods of time during the 18th century; but include the whole of England and Wales, from 1805 down to 1819, at which date the accounts were printed. In collecting, arranging and publishing



these papers, the Committee have rendered a distinguished service to their country. Though the utility of these documents was acknowledged when this inquiry was first laid before the public, subsequent reflection has induced me to set a considerably higher value on them than I at that time did. They contain within the smallest possible compass, a larger mass of authentic details respecting criminal jurisprudence than has ever before been collected into a single volume, from which all subsequent inquirers may derive very important assistance in order to correct or confirm their reasoning. At the same time it is necessary to employ great circumspection in drawing any inference from the particular truths which they exhibit. This arises from the essential distinction which exists between the sciences which relate to matter, and those which relate to man, either as an intellectual being or member of society. Of the properties of matter, or of the manner in which, under any given circumstances, it can be acted upon, we know nothing but from the tables or details of facts which have been observed from without concerning it. But with respect to the nature and government of mankind, in addition to what may be learnt from historical facts, we have a much more valuable source of information in our

own bosoms. As we are all constituted alike, every individual who closely observes the operation of his own understanding and affections, will obtain the surest and deepest insight into the best means of managing those of others. It is by careful and repeated reflection therefore, upon the motives and passions which are the main springs of human action, that we arrive at the true principles upon which criminal law as well as every other sort of legislative institution ought to rest; and the main use of the facts contained in statistical tables is to correct any misapprehension of those principles into which we may fall, and by no means to supersede the authority of the principles themselves. It is impossible that they ever should, for in no instance can it be satisfactorily ascertained, how far accidental circumstances, education, society and government, have contributed to produce the results which official returns and statistical tables exhibit, and how far they ought to be ascribed to the operation of ordinary and permanent causes. This uncertainty alone will always prevent laws from being calculated like chances, to whatever extent the data of which we have been speaking may be multiplied. Political arithmetic, like political economy, is extremely useful in its proper

sphere: but in matters of legislation and policy, if strength and justness of understanding are wanting, no aid which facts or figures can afford, will be found to supply the deficiency.

2. The second section of the Report relates to those laws of which the committee have recommended the repeal. They consist of the following acts, which the committee have divided into two classes.

*Class I.*

1. 1 and 2 Phil. and Mary, c. 4. Egyptians remaining within the kingdom one month.
2. 18 Ch. II. c. 3. Notorious thieves in Cumberland and Northumberland.
3. 9 G. I. c. 22. Being armed and disguised in any forest, park, &c.
4. Being armed and disguised in any warren.
5. Being armed and disguised in any high road, heath, common, or down.
6. Being armed and disguised in unlawfully hunting, killing or stealing deer.
7. Being armed and disguised in robbing warrens, &c.
8. Being armed and disguised in stealing or taking fish out of any river or pond, &c.
9. Being armed and disguised in hunting in his Majesty's forests or chases.

10. Being armed and disguised in breaking down the head or mound of a fish-pond.
11. 9 G. I. c. 28. Being disguised within the Mint.
12. 12 G. II. c. 29. Injuring of Westminster bridge, and other bridges, by other acts.

*Class II.*

1. 31 Eliz. c. 9. Taking away any maid, widow, or wife, &c.
2. 21 Jam. I. c. 26. Acknowledging or procuring any fine, recovery, &c.
3. 4 G. I. c. 11. sec. 4. Helping to the recovery of stolen goods.
4. 9 G. I. c. 22. Maliciously killing or wounding cattle.
5. 9 G. I. c. 22. Maliciously cutting down or destroying trees growing, &c.
6. 5 G. II. c. 30. Bankrupts not surrendering, &c.
7. ————— Bankrupts concealing or embezzling.
8. 6 G. II. c. 37. Cutting down the bank of any river.
9. 8 G. II. c. 20. Destroying any fence, lock, sluice, &c.
10. 26 G. II. c. 33. Making a false entry in a marriage register, &c. five felonies.

11. 27 G. II. c. 15. Sending threatening letters.
12. 27 G. II. c. 19. Destroying bank, &c. Bedford Level.
13. 3 G. III. c. 16. Personating out-pensioners of Greenwich Hospital.
14. 22 G. III. c. 40. Maliciously cutting serges.
15. 24 G. III. c. 47. Harbouring offenders against that (revenue) act when returned from transportation.

The recommendation given by the committee to the House is, that the first of these classes should be entirely repealed; and that in all the acts which are comprised in the second, the punishment of death should be abolished, and that transportation, or imprisonment with hard labour, should be substituted in its stead.

I agree with the Committee in thinking that it would be expedient to repeal Nos. 1, 2, 11, and 12, of the first Class; and that Nos. 2, 6, 7, and 15, of the second, ought not perhaps to be visited with so severe a punishment as loss of life: but with respect to all the other acts contained in these two classes, there is not one among them which the Committee could expect the House of Commons to revoke without mature deliberation and inquiry, and it may be doubted whether a considerable proportion of



them ought not to be ranked among the most important laws now standing in the statute book.

Nos. 3, 4, 5, 6, 7, 8, 9, and 10 of the first class, and Nos. 4 and 5 of the second, are all contained in the 9th G. I. c. 22. commonly called the Black Act, which recites, that ‘several  
‘ill-designing and disorderly persons had associated themselves, under the name of *Blacks*,  
‘and had, in great numbers, armed with swords,  
‘fire-arms, and other offensive weapons, with  
‘their faces blacked, or in disguised habits,  
‘unlawfully hunted in forests and parks, and  
‘destroyed and carried away deer, robbed  
‘warrens, rivers, and fish-ponds, and cut down  
‘plantations of trees, and sent letters in fictitious names, threatening some great violence  
‘if their unlawful demands should be refused,  
‘or they should be interrupted in or prosecuted for their practices;’ and then imposes the punishment of death upon such as are found guilty of any of the offences which it enumerates. It does not appear that this act was either passed unadvisedly, or believed to be unavailing, for it has been frequently excepted from other repealed acts as well as specifically re-enacted, and was at last made perpetual by 31 G. II. c. 42. Whether it should have been worded, or its provisions limited precisely in the



way in which we now find them, may give rise to difference of opinion; but from the number and magnitude of the offences to which it extends, the various sorts of property which it protects, and the possible recurrence of disorders of an equally formidable nature with those by which it was occasioned, it would in the present state of society be hazardous in the extreme to repeal it, without substituting some general statute in its room.

No. 1 of Class II. makes it capital to take away women having substance, or who are heirs apparent, and afterwards to marry them against their will, or to defile them,—a rare crime undoubtedly in modern times, and yet of so revolting a nature when it occurs, that the statutory penalty seems not to have been more than adequate to its atrocity. It is now repealed, and it was urged in justification of that repeal, *that it makes a distinction between persons*. Why should it not have done so, if there was ground for such distinction? In nine cases out of ten where offences of this nature have been committed against women, it will be found that the victims have been women of substance, as the records of the Court of Chancery abundantly testify, in which cases of an analogous nature are most frequently brought forward. But if

there is good ground for the objection, it might easily have been removed by extending the act to all women whatsoever. There is no reason why it should not, for if the combination of violence, contrivance, fraud, and irremediable injury, can in any instance constitute a heinous crime, every one of these aggravating circumstances in its most odious form here concurs to do so.

Why No. 3 of Class II. should have been repealed, is not quite manifest. It does no more than enact that ‘persons who have secret acquaintance with felons, and who make it their business to help persons to their stolen goods, and by that means gain money from them, which is divided between them and the felons, whereby they greatly encourage such offenders,’ shall suffer the same punishment with the felon. Whatever change had been made in the punishment of the felon, would therefore necessarily have extended to the punishment of those persons with whom the felon had secret acquaintance, and there appears to be no impropriety in such an arrangement.

The next act which comes to be considered, is No. 10 of Class II. which has been unaccountably thrown into a heap of acts, which

it is proposed to sweep away as so much statutory lumber. It inflicts capital punishment on five varieties of the same offence, viz. 1. for knowingly inserting or causing to be inserted in any register any false entry of any matter relating to any marriage; 2. for altering or forging, or causing to be altered or forged, or assisting in altering or forging, any such entry; 3. for forging or altering, or causing to be forged or altered or assisting in forging or altering any marriage license; 4. for uttering as true any such altered or forged license knowing it to be false; 5. for destroying or causing to be destroyed, any register in whole or in part, with a view to avoid any marriage, or subject any person to the penalties of this act. The whole of these offences, it must be remembered, may be executed in impenetrable secrecy, evince great deliberation and contrivance, and can only proceed from the basest motives of interest, malice, or revenge on the part of the perpetrators. Still further to increase their malignity, the injury inflicted on those who are the victims of them is irreparable. Most of the ills to which life is subject, whatever may be their nature or degree, can with the help of time and patience be surmounted; but the felonious act which robs a mother of her honour,

and stamps indelible disgrace upon her offspring, produces the most diversified, extensive, and protracted suffering which human villainy can inflict. If any weight should be thought to be due to these considerations, it is hoped that none of the safeguards which the legislature has erected for protecting the integrity of proofs of marriage, will without long and close deliberation be destroyed.

The offence of personating out-pensioners of Greenwich Hospital, which forms No. 13 of Class II. must undoubtedly appear to those who have no means of particularly examining the offence, to be too severe. At the same time it is but fair to observe, that unless a heavy penalty were imposed, the crime would become so frequent that serious loss would be sustained either by the out-pensioners or the public; and perhaps reasons might be adduced in its behalf, which would not readily suggest themselves to any other persons than those who are conversant with the public business of the Hospital.

The committee also recommend that the punishment of death should be removed from No. 11. of Class II. The offence is, ‘to send knowingly any letter without any name subscribed thereto, or signed with a fictitious

‘ name or letter, threatening to kill any of His Majesty’s subjects, or to burn their houses, out-houses, or stacks of corn, hay, or straw.’ To send threatening letters of this and some other descriptions, is an act of such cool and deliberate malice, that the inexpediency of the capital punishment ought to be convincingly established, before it is either totally or partially repealed. It is an offence which is usually committed against persons of feeble minds, or such as are placed in solitary or unprotected situations; and when it is recollected how effectually it ruins the peace of mind of those to whom they are addressed, and how deeply they undermine the security and happiness of society, there are few species of delinquency which exceed it in baseness and enormity.

The only cases now remaining, are Nos. 8. 9, 12, and 14, of Class II. which relate to the cutting down of any sea bank or the bank of any river, by which lands may be overflowed or damaged; the destruction of any turnpike-gate, lock, or sluice on any navigable river; the destruction of any bank, &c. belonging to the Bedford Level; and the malicious cutting of serges; all of which are outrages of the same nature with those provided against by the



Black Act. The strongest argument in favour of the first three of these enactments is, that the property they protect is of a nature which no foresight or vigilance can place beyond the reach of danger, but must at all hours, and especially in remote situations and under cloud of night, lie at the mercy of every individual near whom the owner dwells;—because the damage done to it may be secret, instantaneous, and unlimited;—and because it evinces that preparation and premeditated malice, which the law of every country in Europe justly regards as the chief aggravation of criminal offences. Upon these grounds, I was induced to express some degree of reluctance to the repeal of the capital punishment without further consideration and inquiry; but as the repeal has now actually taken place, I sincerely wish that no criminal courses may in future prevail in any part of the country, tending to bring the propriety of the abolition into question. The same observations which are applicable to the foregoing offences, extend to the cutting of serges, and also to the *cutting down and destroying of growing trees*, which the Committee regard as the most venial of the whole class of crimes of which we have now been speaking. As the person cutting or destroying growing trees can



neither plead profit nor passion in extenuation of his violence, and can only be impelled to such an act because he believes it will be the most poignant injury he can do to the owner, and that a course of years will be required to repair the damage, if it be not irreparable; these considerations taken together seem to mark it out as one of the most outrageous offences which can be committed against property, and evincing a depravity of mind which affords little presage of reformation either from removal to New South Wales or meditation in a Penitentiary. No better instance could be adduced in confirmation of this opinion than the very case on which the Committee, at page 6 of their Report, have made the following diametrically opposite observations.

‘ Were capital punishments reduced to the  
‘ comparatively small number of cases in which  
‘ they are often inflicted, it would become a  
‘ much simpler operation to form a right judgment of their propriety or necessity. Another  
‘ consideration of still greater moment presents  
‘ itself on this point of the subject: Penal laws  
‘ are sometimes called into activity after long  
‘ disuse, and in cases where their very existence  
‘ may be unknown to the best informed part  
‘ of the community; *malicious prosecutors* set

‘ them in motion : a mistaken administration  
‘ of the law may apply them to purposes for  
‘ which they were not intended, and which  
‘ they are calculated more to defeat than to  
‘ promote : such seems to have been the case  
‘ of the person who, in 1814, at the assizes for  
‘ Essex, was capitally convicted of the offence  
‘ of cutting down trees, and who, in spite of  
‘ *earnest* application for mercy from the pro-  
‘ secutor, the committing magistrate, and *the*  
‘ *whole neighbourhood*, was executed apparent-  
‘ ly because he was believed to be habitu-  
‘ ally engaged in other offences, for none of  
‘ which, however, he had been convicted or  
‘ tried. This case is not quoted as furnishing  
‘ any charge against the humanity of the judge  
‘ or of the advisers of the crown : they cer-  
‘ tainly acted according to the dictates of their  
‘ judgment ; but it is a case where the effect  
‘ of punishment is sufficiently shown by the  
‘ evidence to be the reverse of exemplary, and  
‘ it is hard to say, whether the general disuse  
‘ of the capital punishment in this offence, or the  
‘ single instance in which it has been carried  
‘ into effect, suggests the strongest reasons for  
‘ its abolition.’

That it may be seen how far the preceding observations are founded in justice, the evi-

dence of Robert Torin, Esq., the committing magistrate, shall here be subjoined, who was the only witness produced before the Committee. This gentleman says that William Potter, the man who was executed, ‘ was a very bad character, and *he owed a particular spite* against a ‘ miller in the neighbourhood, who had had him ‘ committed for snaring hares. The miller had ‘ planted a young orchard of trees, which he had ‘ taken a great deal of care of; he had planted it ‘ about three or four years before, and one morning when he got up, he found all his trees had ‘ been cut down.—How many trees—between ‘ sixty and seventy?—A great number; he came ‘ to me as a magistrate to complain of the thing; ‘ I asked him if he suspected any particular ‘ person; he said he suspected Potter: I asked ‘ him if there were any prints of the feet; he ‘ said, yes. In consequence I granted him a ‘ warrant, and the man was brought before me; ‘ I made him pull off his shoes, and sent for ‘ the shoemaker who made the shoes; I had ‘ them compared with the footsteps, and they ‘ agreed; the thing was brought home to him; ‘ and he was tried before Mr. Justice Heath, ‘ and convicted of the offence.—He received ‘ sentence of death?—Yes, which rather struck ‘ us all with surprise; the miller, the clergy-

‘ man of the parish, and *several* of the inhabitants presented a petition, and I signed my name to it.—What was the general character of this man?—He was a very notorious thief; he committed a vast number of petty thefts.—Was he ever convicted of petty theft?—No, but he was known to be a thorough thief; he broke open several tills, and stole the money out.—Had he ever been convicted or committed before?—No, not to my knowledge.—Did he confess all the acts of petty theft you have mentioned?—He gave a list of them to Mr. Morgan.—At what period were those confessions made?—After he was convicted; I believe the day after condemnation.—Did the execution of this man excite a considerable feeling in the country?—A great many people were surprised at it; it was considered a case of extreme hardship, but which was palliated by the badness of his character.’—*Report*, pp. 87, 88.

Mr. Torin seems to be mistaken in saying that this man’s confession took place after conviction; for the only extenuation which Mr. Torin himself mentions in his Letter to Lord Sidmouth, p. 88, is ‘ the ample confession which the culprit made soon after his commitment,

‘and which was produced at his trial.’ It may also be added, that prosecution for this offence had not fallen altogether into disuse, as the Committee seem to suppose; for besides this indictment in 1814, the criminal records printed by the Committee, imperfect as they are, show that another was preferred in 1757, p. 242, and another in 1780, p. 247; but as both prisoners were acquitted, it is impossible to conjecture if they had been convicted whether execution would have followed the sentence or not. Three other indictments under the Black Act are mentioned, two at p. 254, and one at 256; but as the particular offences under that statute for which the prisoners were indicted is not mentioned, it is impossible to ascertain whether they were for the cutting down of trees or not. Another case as atrocious as Potter’s, and showing how materially the destruction of growing trees may affect persons in trade, as well as gentlemen and farmers, occurred at the London sessions, in December, 1818. Robert Taylor having been discharged from the service of Samuel Knyvett, a gardener, near Hammersmith, for getting drunk, swore in extremely gross language that he would be revenged, bought a bill-hook and desired it to be ground sharp, with which he cut down 121 of



his master's fruit trees, part of which were of the choicest apples. For this he was tried and convicted; but as it was reserved for the opinion of the Judges whether the destruction of the trees was such as to come within the meaning of the act: it would appear they thought not, for no condemnation followed.

Bearing these corrections and additions in mind, any reader who thinks the subject worth examining, is requested carefully to peruse the Black Act as it stands in the Statute Book, Mr. Torin's evidence, and the facts here produced from the records published by the Committee, and then he will be able to judge for himself whether there is a single statement relative to Potter's case contained in the paragraph quoted from the Report, which is strictly accurate, or which warrants the insinuation against the humanity or understanding of Mr. Justice Heath, the Judge who tried the criminal, or Lord Sidmouth, then Secretary of State for the Home Department, which the Committee appear to have unfortunately conveyed in the very sentence in which they profess to disclaim it. It is well known with what patience and attention Judges on the circuit examine every capital case before they allow the sentence of the law to be



executed : and none is submitted to the King in Council which does not meet with similar consideration. When the Report of the convicts under sentence is brought up, the Secretary of State for the Home Department, as well as the Lord Chancellor always are, and the Chief Justice of the King's Bench, usually is, among the number of the Members who attend on that occasion ; and the determination to which it comes upon the fate of each individual, is formed with that anxiety and circumspection which the nature of the subject demands. In those cases in which the preservation of the good order or security of society requires severity to be employed, the public officers upon whom the infliction of it happens to devolve, have their feelings sufficiently harassed in consequence of the restraint which their judgment is obliged to impose on their inclination, without being at the same time accused of a want of humanity, for no other reason but because they dare not conscientiously indulge it. That applications for mercy will be made from some quarter or other in favour of every individual convicted, all who are acquainted with what happens on such occasions are prepared to expect ; but in the case in question, no ground appears for animadverting upon the manner in which these officers

discharged the functions respectively allotted to them in the administration of justice. What conclusion ought to be drawn from the rare occurrence of any particular crime it is not easy to ascertain. There may either have been no disposition to commit the crime, or the punishment denounced may have been sufficient to prevent it. But whether the result be attributable to the one cause or the other, it seems utterly impossible to admit the principle laid down at page 5 of the Report, and lately advanced in both Houses of Parliament as well as elsewhere, that if few or no punishments for any particular offence have taken place for a certain length of time the punishment ought to be repealed as unnecessary. Such a position may appear ingenious; but it would be difficult to point out any which in practice it would be more pre-eminently dangerous to follow. When those to whom the task of legislation is committed have once determined an act to be a crime, and fixed the penalty which the circumstances of the country where it is to be enforced, in their judgment require to be set against it, there is no reason why it should not be inflicted though it occur only once a century. It is well known to those conversant with criminal law, that particular crimes prevail at distant

and unequal intervals, in certain parts of the country, or among certain classes of society, in a manner perfectly inexplicable. What security is there that the houghing or maiming of cattle may not at some crisis be practised here as it was in Ireland during the last rebellion? So may the systematic destruction of growing timber. It was, in fact, stated by Mr. Curwen in the House of Commons, in the end of the year 1819, that whole plantations had, a few days before the delivery of his speech, been cut down in the neighbourhood of Carlisle for pike shafts, by the misguided men who then sought to convulse the country. It is very short-sighted to disarm justice of any of the terrors which properly belong to it, however long the exemplary conduct of persons of every rank and condition in society may have permitted them to slumber. If this were ever done, the consequence would be, that whenever an emergency arose, we should find the legislature passing whole piles of Acts of Parliament on the spur of the moment, and in a state of misapprehension, confusion, alarm, or exasperation. It surely accords better with the character, dignity, and interest of an enlightened people, to provide with as much deliberation as human foresight will permit,

for all the accidents or diseases to which the body politic is accessible, than to indulge the illusion that health and quietness will always last, and have the remedy to seek as well as administer when the disorder has actually overtaken it.

Having gone through the chief objections which present themselves to the repeal of most of the Statutes which are inserted in the *Index Expurgatorius*, which is given at page 6 of the Report of the Committee, the following observations which are prefixed to it, may appear somewhat precipitate :—‘ Your Committee have  
‘ endeavoured to avoid all cases which seem to  
‘ them to be on this ground disputable. From  
‘ general caution, and a desire to avoid even  
‘ the appearance of precipitation, they have  
‘ postponed cases which seem to them to be  
‘ liable to as little doubt as to any of those to  
‘ which they are about to advert.’

It is possible that many persons may not deem the crimes which have now been brought successively under consideration, of so aggravated a nature as they have here been represented to be ; but it is to be hoped the objections which have been offered have at least shown, that, instead of the repeal of the statutes by which they are now punished being

voted as a matter of course, which the Committee seem to expect, there is scarcely one among them, of which the repeal would not materially alter the spirit and substance of the existing criminal law. If the Committee are solicitous to improve it by the abolition of statutes which will be unanimously pronounced nugatory or mischievous, they should confine themselves to such acts as Nos. 1, 2, 11 and 12 of the first class mentioned in their Report; to which may be added 1 Eliz. c. 2.; 23 Eliz. c. 1. § 5.; and 3 James I. c. 4. § 11, imposing severe penalties on persons not being dissenters who refuse to go to church, and which the 3d of William and Mary does not repeal; the 43d Eliz. c. 13, for the more peaceable government of Cumberland, Northumberland, Westmoreland and Durham; the 25 Hen. VIII. c. 13. imposing a penalty of 3*s.* 4*d.* for every sheep which any farmer should keep above 2000, and a like penalty for every week any farmer should occupy more than two tenements or holds; the 1 Hen. VII. c. 7. against unlawful hunting; and 5 and 6 Edw. VI. c. 4. by which every person convicted of ‘ draw-  
‘ ing or smiting with a weapon in a church or  
‘ church-yard, is to have one of his ears cut off,  
‘ and if the person so offending have none ears  
‘ whereby he should receive such punishment,



‘ that then he should be marked and burned in  
‘ the cheek with a hot iron, having the letter F  
‘ therein, whereby he may be known and taken  
‘ for fraymaker and fighter.’ Such preposterous enactments ought no doubt, on the first convenient opportunity, to be abrogated; but the effect of such alterations would be more ostensible than real, and it is clearly not to improvements of such an unimportant character that the attention of the Committee is principally directed.

3. The 3d section of the Report relates to larceny, which may be ranked among the most difficult subjects of discussion which occur in the whole range of criminal law. The declaration with which the Committee set out at page 8, is couched in the following terms:—  
‘ In the more disputable questions which relate  
‘ to offences of more frequent occurrence and  
‘ more extensive mischief, your Committee will  
‘ limit their present practical conclusions to  
‘ those cases to which the evidence before  
‘ them most distinctly refers.’ The only *practical conclusion* however which is to be found in the Report, is to recommend the revival of the three bills which were introduced by Sir Samuel Romilly into the House of Commons in 1810. But though this is the only *practical*



*conclusion* which the Committee have announced, the greater part of the section consists of *practical observations* on other capital felonies, and of such selections from the evidence as the Committee appear to have thought best calculated to prepare the minds of those to whose hands the Report may come, for other *practical conclusions* which may be proposed hereafter. An opportunity for adverting to some of these observations of the Committee will afterwards present itself. In the mean time it will be expedient to confine the attention to the specific measures which they have recommended for adoption.

The acts which Sir Samuel Romilly wished to repeal, are the 10 and 11 of William III. c. 23. which make it a capital felony to steal to the amount of five shillings from a shop, warehouse, stable, or coach-house; the 12 Ann c. 7. which makes it capital to steal privately from a dwelling house to the value of forty shillings; and 24 Geo. II. c. 45. which makes it capital to steal from on board a vessel in a navigable river to the same amount. Of the extent to which the different species of larceny are carried, and the degree to which they disturb and deprave society, few persons, except those whose attention has been particularly directed to the subject, have formed

any adequate conception. It appears from page 131 of the Appendix to the Committee's Report, that from the years 1810 to 1818 inclusive, the total number of persons committed for trial for criminal offences throughout England and Wales, amounted to 75,021, of which no fewer than 50,595, being nearly two-thirds of the whole number, were for different sorts of larceny alone. Nothing can show more forcibly than this statement of the fact, how great a desideratum in penal jurisprudence an effectual punishment for the different varieties of this kind of delinquency is, though no case can probably be mentioned in which it seems so difficult to be devised. The acts of William, Ann, and George II. which have been quoted, never could have been regarded as a rational method of suppressing any species of this offence. I thought unfavourably of them at the time this paper was originally laid before the public, and subsequent inquiry and reflection has strengthened that dislike to them I then felt myself under the necessity of expressing. That the commission of a theft to the amount of five shillings from a shop or warehouse, or to that of forty from a dwelling house or on board a vessel in a navigable river, should subject every individual who may be guilty of a felonious

act to the punishment of death—even where it is a first offence—without any circumstances of aggravation—and though lighter penalties are annexed to crimes of so much deeper enormity, cannot be denied to be enactments conceived in a spirit of indefensible severity. Perhaps no laws could be pointed out from the beginning to the end of the Statute book, which have so much promoted perjury in jurymen, or afford so much countenance to the charge of unnecessary severity which has so often been preferred against the criminal code of England. It is difficult to conjecture why all modification of them should have been so long and strenuously resisted, for though convictions under them have been of extraordinary frequency, the penalty annexed to them can hardly ever be said to have been inflicted. Sir S. Romilly has said, in the fourth page of his observations, ‘ that if we confine our observations to these ‘ larcenies, unaccompanied with any circumstance of aggravation, for which a capital ‘ punishment is appointed by law, such as ‘ stealing in shops, and stealing in dwelling ‘ houses, and on board ships, property of the ‘ value mentioned in the statutes, we shall find ‘ the proportion of those executed to those convicted reduced very far indeed below that ‘ even of one to twenty.’ His calculation was

far below the truth. It appears from the Appendix to the Committee's Report, p. 141 and 139, that for the 7 years from 1812 to 1818 inclusive, the convictions in London and Middlesex, for larcenies from shops, dwelling-houses and vessels, amounted to 434; the number of executions only to 10, or 1 in every 43. It appears also from pages 132 and 128 of the Appendix, that the whole number of persons capitally convicted for larceny throughout England and Wales, from 1810 to 1818 inclusive, amounted to 1196, and the number executed to 18, or something less than 1 in 66, showing a disproportion still more striking than the one first mentioned. It is manifest therefore that the words of these statutes could have conveyed no notion whatever to any person either at home or abroad, of the punishment which convicted thieves in this country actually suffer; and the acts of parliament in question, instead of being a terror to the 65 criminals over whose heads its threatenings were for a time suspended, must with greater justice have been regarded as a surprise upon the 66th object who became obnoxious to their vengeance. At last the 10 and 11 of William III. was modified by 1 Geo. IV. c. 117, and larceny from shops, warehouses, coachhouses or stables, does not now become a capital offence until the value

stolen amounts to fifteen pounds. Perhaps it would have been an improvement of this statute, if capital punishment had been attached to larceny of a somewhat lower amount in cases where peculiar trust or confidence had been reposed in the prisoner, or where he had previously been convicted of a capital felony of any description. Even as it now stands, however, there can be no question that it is an important amendment introduced into our criminal law.

It is to be hoped that the same mitigation which was effected in 10 and 11 William III. c. 23. by 1 Geo. IV. c. 117. will speedily be extended to 12 Ann, c. 7. and 24 Geo. II. c. 45. As the law at present stands, a man may be proved to have stolen for any number of times to the amount of 14*l.* 19*s.* from a warehouse, where property is in general more unprotected than in any of the other places specified in these acts, and he can at most be transported for life, and is often likely to escape with transportation for seven years; but the law declares him guilty of a capital felony, and sentence of death is regularly pronounced upon him, if he is proved to have stolen to the amount of *forty shillings* from a dwelling-house or from on board a vessel in a navigable river. Such an inconsistency ought never to have prevailed between



co-existing British statutes, and it ought immediately to be removed by softening the severity of the objectionable enactments. It may confidently be advanced that though stealing from dwelling-houses and on board ships in navigable rivers were subjected exactly to the same punishment with stealing from shops and warehouses, the security of no one species of property would be in the smallest degree diminished. The returns afford very strong reason to presume, though it does not amount to conclusive evidence of the fact, that out of the whole number of 1196 who were capitally convicted for larceny throughout England and Wales, between 1810 and 1818, not one individual suffered death for any species of larceny to so small an amount as fifteen pounds, unless under such circumstances of aggravation as might have been made an exception to the general rule. The benefits resulting from that further alteration of the law of larceny which has now been urged, would be of considerable moment. The letter of the law and the administration of it would more nearly correspond, the diminution it would cause in the number of capital convictions would make the population appear to be less profligate, the laws would seem less severe, and the effect of the sentence of death, which is calculated to produce so im-



pressive an effect in the way in which it is pronounced in England, would be less frequently thrown away in cases in which there is an absolute certainty that it never will be carried into execution.

While I cannot forbear from expressing an anxious wish that the amount which subjects a criminal to capital punishment for larceny, should in all cases be raised much beyond what it has hitherto been, I am unable to coincide with those who think it would be expedient to abolish it altogether. In such a country as this, where personal property has accumulated to so unprecedented an extent; where vast warehouses situated in unfrequented streets and lanes, are exposed to the systematic operations of combined and experienced thieves; richly furnished shops and dwelling-houses are intrusted to the care and superintendence of servants; and bills and notes are committed to the custody of clerks and accountants, to an amount which puts it in their power to ruin whole families by a single act of dishonesty; the total abolition of the punishment of death in cases of larceny, would certainly be a hazardous, and probably a disastrous innovation. When the legislature has once fixed the point at which it should attach, it might even be desirable to execute it more frequently than it has lately

been, especially upon those who have been previously convicted of the same offence. No offender is more incorrigible than one who commits habitual depredations on the property of others, and if he has not been deterred from his ignominious practices, by the shame and remorse which generally accompany a first imprisonment, trial and conviction, his case becomes almost hopeless; and criminal justice, which is severe to the few only for the sake of being merciful to the many, becomes bound to put a complete and certain stop to a career, the remainder of which would have been spent in spreading disorder, terror and contamination throughout the community.

4. The 4th and last section of the Committee's Report relates to the punishment of forgery, in the beginning of which is to be found the following passage:

‘ Much of the above evidence sufficiently  
‘ establishes the general disinclination of traders  
‘ to prosecute for forgeries on themselves, or to  
‘ furnish the Bank of England with the means  
‘ of conviction in cases where forged notes are  
‘ uttered. There is no offence in which the in-  
‘ fliction of death seems more repugnant to the  
‘ strong and general and declared sense of the  
‘ public than forgery; there is no other in which  
‘ there appears to prevail a greater compassion

‘ for the offender, and more horror at capital  
‘ executions.’

This language is so decided that it leads one to expect nothing less than a recommendation from the Committee of an immediate and total repeal of capital punishment in a case where they had denounced it as so peculiarly odious. In the very next page, however, the qualified conclusion to which the Committee have come on this part of the criminal law runs thus :

‘ Private forgeries will, in the opinion of the  
‘ Committee, be sufficiently and most effectually  
‘ repressed by the punishment of transportation  
‘ and imprisonment. As long as the smaller  
‘ notes of the Bank of England shall continue  
‘ to constitute the principal part of the circulat-  
‘ ing medium of the kingdom, it may be reason-  
‘ able to place them on the same footing with  
‘ the metallic currency ; your Committee, there-  
‘ fore, propose that the forgery of these notes  
‘ may, for the present, remain a capital offence ;  
‘ that the uttering of forged bank notes shall,  
‘ for the first offence, be transportation or im-  
‘ prisonment ; but that on the second conviction  
‘ the offender shall be deemed to be a common  
‘ utterer of forged notes, and shall, if the pro-  
‘ secutor shall so desire, be indicted as such,  
‘ which will render him liable to capital punish-  
‘ ment.’

Into what inconsistencies able men sometimes fall when they permit themselves to express their opinions on perplexed subjects, in an inconsiderate or vehement manner! It is impossible that these two passages can stand together. The first of them ought perhaps to be judged of rather by the rules of rhetoric than of logic; but the second conveys a recommendation, the full effect of which, the Committee itself perhaps did not completely comprehend. To ascertain the effect of that alteration in the law of forgery which the Committee have proposed, it should be known what proportion the persons executed for forging or uttering forged Bank of England notes, bear to those executed for forging or uttering promissory notes or other instruments of a private nature. There is no document to be found among those printed by the Committee from which that proportion can be exactly ascertained. In the elaborate tables made out by Mr. Evans for the county of Lancaster, which are printed at page 224 of the Appendix to the Report, the offences of *forging and uttering bank notes*, which must of necessity mean Bank of England notes as no other circulate in Lancashire, are entered in a separate column from those of *forging and uttering*

*forged bills and promissory notes*, which cannot well mean any thing else than *bills and promissory notes* of a private nature. The number of executions under the first of these heads between the years 1798 and 1818, amounts to 48; while those under the second amount only to 5, or 1-10th part of the whole. If this deduction is just, it shows that 9-10ths of all the executions which took place in Lancashire, were at the prosecution of the Bank of England. It is also stated by the Committee, at page 24, that not more than two persons were committed to Newgate in 1818 for forgery on private individuals, while it appears from the tables which are to be found at page 144, that no fewer than 55 were committed in London and Middlesex in that year for forging and uttering bank notes, and 97 for having forged bank notes in their possession. As far as any conclusion can be drawn from these premises, it shows the disproportion between prosecutions for forgery at the instance of the Bank of England and those which are carried on at the instance of private persons to be much greater than it is above stated to be. The evidence adduced by the Committee itself to prove the reluctance of private persons, and especially of bankers, to prosecute for this offence, renders it highly probable, that the



disproportion between Bank of England prosecutions for forgery and those at the instance of private persons, will not be found in other parts of the kingdom to be materially different from what it seems to be in Lancashire and London. It may be replied, however, that, supposing the proportion here given to be correct, it still remains undetermined how many of the executions procured by the Bank of England were *for uttering forged Bank of England notes for the first time*, which offence the Committee propose should no longer continue capital. There is strong reason however to conclude, that if there are any executions at all for uttering forged Bank of England notes for the first time they are exceedingly few in number. The tables at pages 128 and 132 of the Appendix, show the executions for forgery throughout England and Wales between 1810 and 1818 to have been to the convictions as 143 to 908, or less than 1 execution for 6 convictions; and Mr. Shelton, at page 23 of the Evidence, says that two indictments are usually preferred by the Bank, one for disposing of the forged note, which is capital, and the other for being in possession of the same note without lawful excuse, which is not capital; and that the parties prefer pleading guilty to the minor charge, ‘as they



‘ are aware that in 9 cases out of 10 the Bank  
‘ will not prosecute upon the capital charge.’  
As the bank is so backward in prosecuting on  
the capital charge, and so small a proportion  
of the whole number convicted are executed,  
there is reason to believe, from the character  
and capacity of those intrusted with the admin-  
istration of justice, that the worst cases are  
selected for the severest punishment, and con-  
sequently that very few of those who suffer  
capitally have been convicted of uttering forged  
Bank of England notes for the first time.  
Whatever that proportion may be, it cannot well  
exceed 1-10th of the whole number executed;  
and subtracting this from the 9-10ths already  
mentioned, there still remain 8-10ths of the  
whole number of persons executed for forgery  
in England and Wales, who appear to have been  
convicted as actual forgers of Bank of England  
notes, or for having been convicted more than  
once of uttering them. It is further to be col-  
lected from page 132 of the Appendix, that the  
whole number of persons executed annually for  
forgery throughout England and Wales, taking  
the average of the 14 years between 1805 and  
1818, has been 15; 8-10ths of whom amount  
exactly to 12; so that, had Bank of England  
notes continued to form the same proportion of

the circulating paper of the country which they did in 1819, the result of the modification of the existing laws respecting forgery recommended by the Committee would have been, that 3 out of every 15 persons who might in future be convicted for forgery would have escaped with transportation or imprisonment, while the other 12 would have continued to be consigned to death as formerly, for an offence respecting which the Committee itself has pronounced that there is none ‘in which the infliction of the punishment of death seems so repugnant to the strong and general and declared sense of the public, and that there is no other in which there appears to prevail a greater compassion for the offender, and more horror at capital executions.’ Should there be any misstatement or miscalculation in any part of this deduction, the inferences drawn from it must of course fall to the ground; but if there really is that discrepancy which has been supposed between the two extracts made from the Report, it furnishes a striking illustration of the mischief which may arise from the introduction of overcharged expressions into any part of the proceedings of a legislative Committee. Such language is sure to catch the attention of many who overlook or disregard the limitations or

explanations with which it is afterwards coupled ; and, by the appeal which it makes to the passions, is in the highest degree unfavourable to the undisturbed exercise of the understanding, which ought then to be alone consulted.

The point which has now been brought under discussion, is not the only one in which a strong though unperceived bias seems to have influenced the proceedings of the Committee. Through the whole of their inquiries with regard to forgery, a want of circumspection is observable, as well as a degree of deference shown to temporary clamour, which it would have been better for persons in their station not to have encouraged. Nothing else could have led the Committee to attach so much importance to the management and result of certain Bank prosecutions for forgery which took place in 1818. The real state of the facts which gave rise to the popular feeling which was then displayed, was probably not generally known, and at any rate had scarcely any perceivable connexion with the main question about the propriety of capital punishment for that offence. Exaggerated statements of the number of those who suffer for forgery or uttering forged notes, at the prosecution of the Bank of England, were circulated and believed ; and even though no

prejudice had in that way been excited, it has been established as satisfactorily as the nature of the case allows, that the acquittals which then took place can with no propriety be considered as evidence of any disinclination on the part of jurors to convict capitally for that offence. Upon an examination of the whole circumstances connected with the occurrences which then took place, little doubt will remain in the mind of any unprejudiced inquirer, that the acquittals arose from an unaccountable refusal of the Bank to produce the usual legal proofs of guilt; from a notion generally entertained that the Bank had not taken suitable pains to secure its notes against imitation; and also from a belief, which obtained credit among certain classes of the community, whether well or ill-founded, that an unfair selection was made of the offenders against whom the Bank officer proceeded upon the capital charge. It was accordingly found that as soon as the Bank ceased to arrogate the prerogatives which it then usurped, and to conduct itself like any other corporation, the attacks then directed against prosecutions for forgery immediately ceased, and the objections now made to capital punishment for that crime, are urged with the calmness and moderation which will best promote

the advancement of truth in every kind of intricate discussion.

The Committee have also conceived it to be part of their duty to make minute inquiries into the effect which the execution of criminals has upon prisoners and spectators, and into the judgment which convicts pronounce on the comparative degrees of their own and each other's guilt. There is no doubt that such a course of investigation may disclose a number of facts which an age delighting in curious topics of inquiry may be pleased to learn, but it is one which requires great skill in the management of it, and which, to persons possessing that acquaintance with the business and feelings of mankind which the House of Commons are known to do, could convey so little practical instruction, that the Committee would have judged better if they had never entered upon it. With regard to public executions, it is notorious that, in all ages and countries, the good effects produced upon those whom curiosity has gathered together to witness them have been extremely limited. Their utility consists more in the tone they give to conversation in the neighbourhood, the circumstances by which they are preceded and accompanied, or the lessons of parents, guar-



dians, or masters, addressed to those under their charge, to which they afford occasion, than to any effect which they produce at the moment. It is true, that in districts where population is thin and orderly, and executions of rare occurrence, a considerable part of the spectators may retire to their homes with impressions of salutary terror; but no man believes that this is now the case in almost any part of England, and few will question the correctness of the opinion expressed by Mr. Brown, the present Keeper of Newgate, at page 68—‘that many of those who attend executions are of the most depraved and abandoned character.’ It however happened in a debate in the House of Commons, on the subject of capital punishment, which took place in 1818, that an exclamation of the crowd assembled in front of the Old Bailey to witness the execution of a man who was convicted of robbery in 1807, was treated as an unequivocal indication of the sentiments generally entertained respecting the undue severity of the present administration of criminal law. It is fair to make allowance for expressions which a speaker in the warmth of argument may unintentionally be led to employ, but if it should really be imagined that what takes place on such an occasion is any criterion of public opinion, the



proposition cannot possibly be admitted. With just as much propriety might the shouts of applause with which the rabble at an election in Covent-Garden hail the delivery of the wildest harangues in favour of popular rights, be quoted as a test of the political opinions which influence the great body of electors throughout the empire. Instead of preventing crimes, the evidence given before the Committee leads one, on the contrary, to believe that executions have a marked tendency to increase them, and that it would be better if they took place within the prison walls than without them, were it not that publicity, in every step of the administration of justice, is the best security that can be given that it will be dispensed with wisdom or impartiality. Neither is it obvious how prisoners should be able to form a better estimate of their own or their neighbours' guilt, than the mobs who assemble at an execution. One can point out many reasons why the judgment of criminals should be worse than that of those who have never swerved from rectitude, but none why it should be better. It is to be feared that most of those who become criminal themselves, or have been compelled to associate with criminals, lose that abhorrence of guilt, which is felt by the uncorrupted part of society, without acquiring

any peculiar capacity for measuring its degrees of enormity. That they should make many shrewd and correct observations, both on themselves and their companions in vice, is exceedingly natural; but that they should evince extraordinary impartiality or delicacy in their moral perceptions, is a point which has not been, and, it is believed, cannot be established. The Rev. Mr. Ruell (p. 70) says, that convicts ‘are willing to make general confessions of guilt, but discover a very strong propensity to extenuate their individual offences.’ The Rev. Mr. Cotton (p. 62) confirms the fact, and gives an example of the acuteness with which in their own case, convicts are capable of urging that extenuation. That a considerable portion of them before execution unburthen their minds with great sincerity and candour, there is no reason to disbelieve; but so far is it from being true, as the Committee seem to suppose, that unreserved assent ought to be yielded to the general correctness of their statements of fact and opinion, that, in a large proportion of instances, there is ground to apprehend that not the smallest reliance is to be placed upon their most solemn dying declarations.

Having detailed the reasons from which

it seems to appear, that the opinions which the Committee have pronounced upon the punishment for forgery are neither deliberate nor consistent, and that a large portion of the information which they have collected on the subject may be laid aside as of little real use, the remainder of the evidence, consisting of the testimony of 4 merchants and 8 bankers, and the only portion of it from which any sound inference respecting the state of the public mind on that head can be drawn, ought now to be considered; but as these gentlemen neither confine themselves exclusively to forgery, nor to a declaration of their own sentiments on the topics about which they have been examined, it may be more convenient to postpone the consideration of their evidence until it is taken in conjunction with that of the other witnesses who have been called to prove the general feelings of the people of England with respect to our present criminal law.

## II.

Having taken a view of each of the sections into which the Report is divided, and of the alterations recommended in it for adoption, the next subject into which it was proposed to inquire, was the further changes in the Criminal Law which the Committee have in prospect.

This forms a branch of the Report in no respect less important than that which has been just considered. ‘The object of the Committee,’ they say, at page 3, ‘has been to ascertain, as far as the nature of the case admitted, by evidence, whether, in the present state of the sentiments of the people of England, capital punishment in most cases of offences unattended with violence, be a necessary or even the most effectual security against the prevalence of crimes.’ They add, at page 7, in speaking of the present state of the punishments of transportation and imprisonment, that ‘in the more improved condition in which the Committee trust that all the prisons of the kingdom will soon be placed, imprisonment may be hoped to be of such a nature as to answer every purpose of terror and reformation.’ The end and object of the Committee, or of its leading members, is thus distinctly announced, and unless the meaning of their expressions has been misapprehended, they seem to imply the following two distinct propositions:—1. That the body of evidence annexed to their Report satisfactorily proves the general feeling of the people of England with respect to the present state of the criminal law; and 2. That the punishment of death

may hereafter be completely superseded by the judicious application of transportation and imprisonment. Each of these points it will be necessary to examine separately.

1. The first proposition laid down by the Committee seems to be, that the body of evidence annexed by the Committee to their Report, satisfactorily shows the prevailing feeling of the public to be adverse to the spirit and substance of the present criminal laws. Of these laws it is by no means the object of the present observations to express an indiscriminate admiration, and on that account some anxiety is felt to avoid the imputation of any desire to under-rate the labours of the Committee to improve them. Of the importance of the documents contained in the volume of which they have put the House and the public in possession, a distinct opinion has already been delivered. It may here be added, that the minutes of evidence comprise a number of detached facts and observations, of which considerable use may be hereafter made; along with the testimony of four five witnesses, whose suggestions and information on various branches of criminal law are of indisputable value. Beyond this there seems no reason to go, and professing all proper respect for the reputation and



talents of many gentlemen whose names appear on the Committee, or for those among them who are understood to have conducted its proceedings, there appears good cause for considering the evidence which it has collected, as indistinct, partial, and inconclusive.

By *indistinctness*, is meant that difficulty which the reader finds in ascertaining the precise opinion of any single witness, or the result of the testimony of the whole, on some of the most important matters under investigation. We are presented with a mass of facts, discussions, and conclusions, all of them unquestionably bearing upon criminal law, but the exact import of which it is extremely perplexing to discover. The Committee have not always kept in mind, that their chief object was to discover the general sentiments of the people of England respecting the whole or the most material of the criminal statutes now in force; and in an inquiry so much more extensive and important than those which the House of Commons usually delegates to one Committee of its members, the questions and answers could not have been rendered too precise or particular. It might even have been advisable to have had a list of common interrogatories, to be put to each of the witnesses as they



presented themselves before them. Instead of this, the evidence of Sir Archibald Macdonald, Mr. Montagu, Mr. Harmer, and even that of Mr. Evans, though by far the most important which has yet been laid before the public on the subject, shows the extreme latitude in which the Committee indulged the witnesses in the order and form of their communications. The very first question put to Mr. Montagu is expressed in the following and indefinite terms, ‘The Committee wish to know what part  
‘of your extensive observations of the administration of the Criminal Laws you are now  
‘ready to communicate to the Committee?’ To which Mr. Montagu is pleased in return to make this courteous and accommodating reply, ‘I am willing to communicate any thing and  
‘every thing I know that they think proper to  
‘request of me;’ and then proceeds to give a compressed statement of the scattered information which he possessed upon the subject, in consequence of his reflection upon it for, he rather thinks, upwards of twenty years. Yet, strong as the reasoning of Mr. Montagu is against capital punishment in the abstract, he has not explicitly stated his opinion on any specific crimes, except those of forgery, larceny without violence, and a bankrupt’s fraudulent

concealment of his effects from his creditors. Most of those witnesses on the other hand, who do not indulge in general discussion, but are satisfied with returning answers to the questions put to them, after expressing unqualified general disapprobation of the severity of the law as it now stands, very often add, that except in certain cases which they have mentioned, *and some others, or with some exceptions, or in atrocious cases*, capital punishment ought not to be inflicted. In all probability, no two persons will agree upon the exact offences which ought to be comprehended under these expressions, and the witness would most likely have been himself embarrassed if he had been requested to enumerate them. A great deal of time and trouble is no doubt saved to the Committee by the use of vague and general language, but it detracts extremely from the value of evidence when it comes to be minutely examined. It is not wished that a high degree of importance should be attached to that defect in the evidence which has been now pointed out. It is only mentioned as one which can hardly fail to be constantly and perceptibly experienced by every one by whom the evidence is attentively perused. Wherever any such imperfection occurs it keeps the mind of the reader con-

stantly on the stretch, in order to discover whether he understands the witness or the witness understands himself, and ultimately injures the weight and satisfactoriness of the testimony in which it is discernible.

The next objection to the evidence is, that it is *partial*. In making this observation on the depositions made before the Committee on Criminal Laws, it is doing no more than justice to acknowledge, that in no part of the world and on no subject is it possible to assemble witnesses more distinguished for intelligence and veracity than in this country, and no where has more valuable information been collected than by some of the committees which have been appointed by the Houses of Lords and Commons within the last thirty years. No other instances need be quoted in support of this than the Committee of the House of Commons on the Orders in Council in 1807, on the Leather Trade and on Bullion in 1812, on the limitation of hours of work in Cotton Manufactories in 1817 and 1818, that on the Climbing Boys' Bill in the House of Lords in 1818, and that in the House of Commons on the State of the Roads, which sat in the course of the same year. But a just estimate of the powers of a Committee of either House in the investigation of a subject,

can only be made when a considerable number of the members who take an active part in its proceedings differ in opinion on the points which they are delegated to examine. Where this is not the case, the member who moves for the committee, along with two or three friends whom he procures to be nominated upon it, because he knows their views on the subject assimilate with his own, have the uncontrouled management of the inquiry, and, by selecting witnesses known to be favourable, and omitting those who are adverse, they obtain a body of facts or opinions which in reality are nothing else than the strongest ex-parte statement which can be produced in support of the measures which the report of the committee is sure to recommend. On the present occasion, the Committee consisted of the following persons: Sir James Macintosh, chairman, Mr. Bathurst, Mr. Scarlett, Mr. Attorney General, Mr. Wilberforce, Lord Nugent, Mr. Solicitor General, Mr. Abercrombie, Mr. George Granville Venable Vernon, Mr. Alderman Wood, Sir Charles Mordaunt, Lord Althorpe, Dr. Phillimore, Mr. Finlay, Mr. Fowell Buxton, Mr. Courtenay, Mr. Brougham, Mr. Williams Wynn, Mr. Littleton, Mr. Macdonald, Mr. Holford, and Lord John Russel; many of them as enlightened men as

could have been intrusted with the examination of a serious subject.

The names are so numerous in conformity it is presumed with established parliamentary usage, though there appears to be no constitutional necessity why the practice should continue the same, when circumstances have so materially changed. In former days, when debates were rare, business slack and inquiries superficial, it might have been thought proper to appoint numerous members to serve on one committee by way of giving each of them some visible duty to perform; but when the business which the House has to dispatch is perhaps ten times as great as it was a hundred years ago, it seems reasonable that a corresponding division of labour should take place, and that a host of names should not be enrolled on one committee, while it is certain to happen, as it is said to have here done, that in point of efficiency the greatest part of them will prove complete non-entities. The Report made, however, is still ostensibly the Report of the whole Committee, and yet while every one of the members of the House individually taken, knows perfectly well by what individuals it has been framed, and how it ought to be estimated, the whole of them, when acting in their collective capacity, are wil-



ling to persuade themselves, the House of Lords, and the public at large, that a Report so drawn up ought to possess all that weight and authority which the united talents and experience of those whose names are annexed to it could have commanded, if they had given it their undivided attention.

Whether it was prudent for the House to grant that sort of committee which was appointed, it is foreign to the present purpose to inquire; but having once been granted, the next best course to have pursued, would have been to enter at once upon a full and fair examination of all the matters referred to the Committee, however laborious the undertaking might have proved. There is every appearance, however, that this was not adopted, and that the mover of the Committee and his friends have had the uncontrouled guidance of its proceedings, while those members of it who in private might not approve of the line which was adopted, have yet, by neglecting to attend or interfere, permitted a volume of testimony to go forth to the world, which will have produced a deep and extensive effect before it can be either explained or contradicted. If there are any persons who think that one or two votes of the House of Commons, or that both Houses



of Parliament together, can place things on the same footing on which they stood before this inquiry began, they will find themselves egregiously mistaken. That the minds of the witnesses examined were not, in general, in that perfectly unbiassed state which the object of the Committee strongly required them to have been, will be denied by few who are willing to undergo the labour of fully and deliberately perusing it. The only witnesses whose testimony can be regarded as perfectly neutral, are Sir Archibald Macdonald, Mr. Evans, Mr. Carr, and those gentlemen who were merely called upon to present returns to the Committee, or whose evidence in consequence of the situation they hold in criminal courts or about prisons and houses of correction, could not easily have been dispensed with. With regard to the rest, their evidence is undoubtedly entitled to much consideration. It is only alleged to be an obvious conclusion from the whole tenor of their examinations, that they are strenuous abettors or propagators of a certain set of opinions, the soundness and prevalence of which, were the very points which the Committee had to determine; and, being therefore in some degree parties as well as witnesses, their testimony cannot justly have as much weight as that of

persons of the same degree of understanding and veracity would have deserved, who had never taken any active interest in the subject.

Neither have the Committee informed us, which one would think it was natural for them to do, by what means they assembled a cloud of witnesses whose opinions so exactly coincide; the selection of whom seems, from their habits, place of abode, and profession, to have been so capricious; and between whom and the Committee such constant harmony of sentiment prevailed, that when on one occasion (page 24) it was disturbed by Mr. Shelton, clerk of the arraigns at the Old Bailey, who appears hostile to some doctrines respecting criminal law, the impatience into which the Committee seem to have been betrayed marks the unwelcomeness and rarity of such an occurrence. Unless the greater part of them are members of the society for the improvement of prison discipline, or linked together by some bond of connection, social or religious, it is inexplicable how the Committee could have alighted on so many individuals so admirably adapted to their purpose. If any such cause of union exists, there would have been no harm in disclosing it. It is the concealment of it, on the contrary, which

creates distrust; for we naturally suspect the legitimacy of the end when we are denied all explanation of the manner in which the means are put in motion which we see at work for its accomplishment. Besides the inference which a general view of the evidence affords, that some sort of understanding or other exists among the greater part of those who gave it, it presents certain coincidences and peculiarities of appearance, which strongly tend to confirm the presumption. At page 65, Mr. John Smith alludes to conversations he has had with Mrs. Fry; and again, at page 64, he speaks of destroying forged instruments, which may be the same which Mr. William Fry, at page 74, and Alderman Wood, at page 86, allege to have been swallowed by the person forged upon. Another circumstance of the same sort occurs at pages 86 and 87, which contain the examinations of Alderman Wood and Mr. Wilkinson, a merchant in the city. The first question put to Mr. Wilkinson is, 'Have you had any experience on the subject in question?' To which he replies, 'I can bear out the assertion of Alderman Wood,' alluding to reluctance to prosecute; and then gives an instance of the refusal of his own firm to prosecute, though robbed of 1000*l*. This is the whole of Mr.

Wilkinson's deposition. He is, however, afterwards asked, 'Do you happen to have heard any thing of the same sort from persons among whom you live?' To this he answers, 'Oh dear! yes. Not expecting to be examined, I cannot call to mind particular instances; but I have observed a general unwillingness where the consequences were so serious as death.' How then came Mr. Wilkinson to be examined at all? We are obliged to suppose either that the Committee converted a gentleman, who happened to walk into the room in which they were sitting, into a random witness, or that instances of unwillingness to prosecute were so rare, that Alderman Wood had prevailed upon him to walk down to Westminster to make an offering of his fact at the bar of the Committee on Criminal Laws. The case of Mr. Johnson, at page 100, is still more curious. The first words addressed to him by the Committee are these: 'You were going to relate a case which occurred to yourself connected with the subject of the present inquiry.' Unless Mr. Johnson had begun to answer before any question was asked, or it had been arranged by some of the parties concerned, that at a certain stage of the proceedings of the Committee the case which occurred to him should be related, this

part of the evidence is utterly unintelligible. Other incidents occur in different parts of the Minutes which are equally unaccountable.

*Even the manner and form of putting the questions* is remarkable. It rarely happens that they are so expressed as to involve an aggravated case of the offence inquired about, to show what character an offender previously bore, or the shock which society or commerce might sustain should the multiplication of any class of crimes follow the abolition of capital punishment. From the vague and distant manner in which they are proposed, it looks as if the Committee had sat in perpetual fear of obtaining an answer or detecting a fact unfavourable to an alteration of the existing law. Mr. Hobler, at page 84, had said a good deal about prosecutors forfeiting their recognizances rather than prosecute; and Mr. Harmer, at page 108, roundly asserts that he had known them ‘ frequently forfeiting their recognizances.’ Mr. Shelton, who, from the length of his experience at the Old Bailey, must know more on the subject than almost any other person, in reply to an interrogatory to the same effect, answers, ‘ No, I do not recollect one.’ The contradiction between these two answers is as direct as can be conceived; and a reference to the Exche-



quer Office, where estreats are returnable, would at once have settled to which of the two statements credit ought to be yielded. The Committee did not think proper to make it, though it was well worth their while, both on account of the importance of the fact itself, and of its effect on the testimony of one or other of the witnesses. The following extraordinary query is also addressed by the Committee to Sir Archibald Macdonald. ‘The people of England, being as moral and religious a people as any in the world, do you think that the phenomenon of the number of crimes results from the severity of the law?’ It is impossible to conceive the beginning and end of a question to be more completely at variance. If the people of England are really as moral and religious as any in the world, the extraordinary number of crimes which they are at the same moment assumed to commit, appears, to common apprehension, to be not only a phenomenon, but an impossibility. That the higher and especially the middle classes in England are as moral and religious a people as any in the world may perhaps be true, though these are points on which, of all others, it becomes us to think and speak with diffidence; but with respect to the present state of a large proportion



of the population, if any one, after comparing them with those of the same rank in many other nations in Europe, should still persist in maintaining their equality, *the number of crimes* is the fact which of all others would most effectually refute the supposition. But it was not to indulge in refinements of criticism that the question has been quoted. It has been pointed out to the reader's attention, because the terms in which it is couched, evince a decided partiality in the minds of the Committee at a very early period of their sittings, which augured ill for the candid prosecution of the inquiry. But they have done more than this. They have not only availed themselves, to the utmost, of witnesses who are favourable to the extreme mitigation of the penal code, but they must intentionally have avoided all such as they believed to be of an opposite opinion. On many points they could not but know that diversity of opinion prevailed: their own witnesses have repeatedly averred it; and the Report itself involves the existence of the fact. Mr. Barnett, at page 83, after declaring himself hostile to capital punishment for forgery, adds, 'there are bankers who hold different opinions.' Jennings, page 105, alludes to 'many societies for the prosecution of felons in various parts

‘ of Somersetshire ;’ and Mr. Garrett, at the bottom of the same page, speaks of the objection to capital punishment as hitherto only ‘ very generally diffusing itself among all classes.’ There could, therefore, have been no difficulty in bringing before them some who disapprove of any rapid or fundamental change in our present law ; every member of the Committee could probably have mentioned scores of bankers and merchants who do so ; and it would have been manly and becoming to hear what some of them had to say in justification of their sentiments. Should it be alleged that the Committee were at liberty to choose whatever witnesses and mode of examination they judged most expedient for effectuating their object, there can be no doubt that, under other circumstances, this would have been an unanswerable vindication. Some of the noblest victories ever gained by wisdom and humanity over ignorance and prejudice, have been achieved by the perseverance of a few individuals, whose separate or united efforts have at last produced in the public mind a conviction of practical or speculative truths, which it had previously denied or disregarded. But in those instances the point proposed was to do that, which is assumed in the case before us, to be already done. The duty delegated to

the Committee by the House, and which they themselves have distinctly recognized, was to prove what the existing sentiments of the people of England respecting criminal punishments at this time are, and in no respect to convert the Committee itself into an engine for changing such sentiments into what in their apprehension they ought to be. On the purity of the motives of the Committee no reflection is intended to be thrown, but it is matter of regret that they should ever have transgressed the limits of the province assigned to them, as the keenness and anxiety they have displayed will rather injure than promote their cause, and may hereafter prove an obstacle to more cautious improvements.

The last general imperfection attributable to the evidence adduced by the Committee is, that it is *insufficient*.

The whole number of witnesses called by the Committee amounts to 61. From these Messrs. Hobhouse, Chambré, Woodthorpe, Stirling, Woodthorpe, jun., Capper, Edgell, Pugh, Clark, and Knapp, making 10 in all, ought to be deducted, as they only appeared at the bar of the Committee to present official documents. To these Mr. Torin may be added, as his testimony refers solely to the case of Potter, whose

name, offence, and execution, have been already mentioned.

Other ten of the witnesses hold official situations either in criminal or police courts, or about the prisons of the metropolis. These are Messrs. Ruell, Cotton, Brown, Newman, W. L. Newman, Payne, Thompson, Yardley, Hobler, and Shelton. Mr. Cotton, Ordinary of Newgate, Mr. Ruell, Chaplain of Clerkenwell, and Messrs. Newman and Brown, the late and present keepers of Newgate, were examined chiefly respecting the effect of executions on spectators, prisoners, and convicts. They all agree that executions have no effect upon spectators, and very little upon convicts themselves, or their companions in prison. They add, that in murder, unless popular prejudice intervenes, both spectators and prisoners approve of capital punishment, but disapprove of it in cases which are said *not to be of an aggravated description*, and especially for issuing forged bank notes. Whether this disapprobation extends to forgery itself, the witnesses do not altogether coincide in their opinion. The little reliance which can be placed upon the declarations of that class of persons concerning whose sentiments these four witnesses were examined, has already been made the subject of observation. Messrs. W.

L. Newman, Payne, Thompson, Yardley, Hobler, and Shelton, are clerks in public offices connected with the administration of criminal law, and are examined about matters of a very miscellaneous nature; but principally respecting the reluctance manifested by prosecutors to proceed capitally, and the conduct of witnesses and juries in cases where capital proceedings have been instituted. They evince very different degrees of intelligence and experience, as any one who looks over their evidence will perceive, but there seems no necessity for going through the whole of it in detail. They all agree that in cases of stealing from the shop to the amount of five shillings, and from the dwelling-house to the amount of forty, a disinclination in prosecutors to sue, in witnesses to appear, and in juries to convict, is unequivocally manifest. Although the evidence adduced before the Committee affords no grounds to conclude, that it is common for juries to perjure themselves by bringing in a verdict in direct contradiction to the proof laid before them: Mr. Buxton, in his speech on the 23d of May, 1821, offered to show that such perjury occurs in “in tens, nay, in hundreds of thousands of instances,” and quoted from the sessions papers a variety of trials for larceny, in



which the criminal was acquitted of the capital charge by the jurors taking upon them to set an undue value upon the property stolen. He added, that to this class of cases, he thought proper, for the sake of clearness, to confine himself. As far as I have had an opportunity of looking into the printed sessions papers, perjury on the part of jurors is seldom apparent in any other cases than those of larceny, and even there it by no means prevails to the extent which the literal interpretation of Mr. Buxton's words would warrant. There can be no doubt, however, that in cases of larceny, it is remarkably frequent, and its existence adds to the regret which has already been expressed, that a total alteration of the law of larceny did not take place a considerable time ago. There would then have been no pretence for the commission of an offence so fraught with every evil consequence. It is unaccountable that the perjury of jurymen should on any occasion have been treated lightly, and its consequences so long overlooked by the judges and the legislature. The violation of an oath, like any other breach of duty, will cause less compunction as it becomes habitual. That which is reckoned pious to save life, will in time be thought venial to save reputation, and not very culpable to



serve a friend, a cause, or a party. In London, and the neighbourhood, jurors are so apt to be misled or inflamed by the daily press, that they have more than once threatened to assume this discretionary power, from which every public and private consideration ought to withhold them. *Quis custodiet ipsos custodes*, applies more emphatically to jurymen than to the guardians of any other public privilege; and if they should ever conceive themselves authorized, under any pretence, to betray their trust, it will be no less discreditable to them than calamitous to their country. Jurymen ought to be as far removed from wilfulness on the one hand, as from subservience or intimidation on the other, and to have no other concern than to give a true verdict according to the evidence which has been laid before them. It is the admirable mixture of openness, good sense, good feeling, and firmness in jurymen, and not to the mere institution of a jury, that the excellence of that mode of trial in England has been owing, and without these qualities its establishment will be of little service either there or in any other part of the world.

Some of the witnesses allege that there is the same disinclination to prosecute in burglary, or at least in some sorts of it, that there is

in larceny. Mr. Hobler, at page 83, speaks of the reluctance to prosecute capitally being general; but it is not clear what precise meaning he attached to the assent which he gave to the question put to him. These witnesses are also asked about reluctance to prosecute for forgery; but their testimony does not establish its existence to the extent which might be inferred from the language which is made use of in the Committee's Report. On the contrary, Mr. Shelton, who has filled the office of clerk of the arraigns of the sessions of oyer and terminer and gaol delivery at the Old Bailey ever since the year 1784, denies positively that he has perceived any such reluctance at all; and from his ability and experience, his testimony, next to that of Mr. Evans, seems on this and most other points on which he was examined, to be the most valuable laid before the Committee.

The next witnesses whom it may be convenient to class together, still are, or formerly have been, in the profession of the law, viz. Sir Archibald Macdonald, Messrs. Evans, Montagu, Carr, Mainwaring, Harmer, and Drs. Colquhoun and Lushington. The names of the first three have been introduced already. Sir Archibald Macdonald and Mr. Evans have been examined upon so many points, that it would

be difficult to arrange what they have said under distinct heads, but the scope and spirit of the whole does not bear out the chief alterations in the criminal law which the Committee have in contemplation. As Mr. Buxton, at page 51 of his speech, still relies upon the evidence of Sir Archibald Macdonald as materially in his favour, I have again looked over the various parts of that gentleman's testimony, and can perceive no reason for changing the opinion previously expressed concerning it. The testimony of Mr. Montagu coincides in all points with the views of the Committee. Mr. Carr, solicitor of Excise, confines his observations to the impropriety of punishing certain offences against the excise laws with death, instead of proceeding against them by means of fines and penalties; and the guarded manner in which his testimony is given, and strictness with which he confines himself to the matters which fall peculiarly within his province, furnish a striking contrast to that of several of the other witnesses, and adds greatly to the weight which is due to his opinions. It would very much reduce the list of capital felonies, and remove the severity of the criminal code, if Mr. Carr's suggestions were adopted. The repeal of the capital punishment is no doubt the first and

most important practicable alteration, but it would be exceedingly desirable to push the improvement one step farther. In the preceding inquiry into the state of the Statute book, it was endeavoured to be shown, that the revenue acts are obnoxious as a chief cause of the accumulation and intricacy of the law. Here they put on a still more odious appearance, as a prime source of the increase of immorality and crimes. For each of these reasons separately considered, and still more when taken in conjunction, one cannot but wish that all offences connected with the Revenue should, as far as possible, be abolished.

The next witness is Mr. Mainwaring, one of the police magistrates, who says, that greater reluctance to prosecute exists in capital crimes, than in those which are not capital, and that he has occasionally discovered a reluctance to prosecute for shoplifting, and embezzlement in dwelling-houses. He has had no cases of forgery against him excepting those of the Bank of England. In these he has occasionally discovered a reluctance in witnesses to give evidence, but that evidence relates only to the transit of the notes from hand to hand. He thinks that mitigation of punishment would produce more frequent prosecutions, and that

‘ for most offences,’ hard labour is the most effectual preventive. He adds, that capital punishment has not much tendency to deter London criminals, and that the best punishments now in use, are confinement on board the hulks and in the Penitentiary. This witness says nothing of reluctance to prosecute in forgery, false testimony given by witnesses, or false verdicts returned by juries; and though he states that *for most offences* hard labour is the best punishment, he leaves us in the dark, as many other witnesses have done, respecting the specific offences which he included under those terms. Mr. Harmer’s evidence (who is a solicitor, and has been chiefly retained by persons apprehended for offences,) altogether accords with the views of the Committee. He speaks in the strongest language of the reluctance to prosecute in forgery; has, in such cases, ‘ frequently seen persons withhold their ‘ testimony, and in all capital indictments, with ‘ the exception of murder and some other heinous offences, prosecutors show great reluctance to persevere, frequently forfeiting their ‘ recognizances:’ and in the offences of stealing in shops and dwelling-houses, it has, ‘ to ‘ his mind, amounted to demonstration that the ‘ articles were of such a value as imperiously



‘ called upon the jury for a verdict of guilty, and the instances, he may say, were innumerable, within his own observation, of jurymen giving verdicts in capital cases, in favour of the prisoner, directly contrary to the evidence.’ The best punishment for thieves, he thinks the penitentiary or the hulks, but not transportation, or if transportation, only for life. He also intrepidly asserts ‘ that the punishment of death has no tendency to prevent forgery, and no terror for a common thief.’ With all proper respect for the penetration and experience of Mr. Harmer, it is impossible to attach that importance to his evidence which the Committee have endeavoured to do. He speaks in a manner much too incautious and unqualified; and his opinion respecting the inefficacy of the punishment of death is so directly at variance with all the springs of human action, that few persons could bring themselves to assent to it, though corroborated by all the thieves and forgers in the kingdom. Dr. Lushington only mentions some cases of reluctance to prosecute for capital offences, which fell within his own knowledge. The only remaining witness of this class is Dr. Colquhoun, the most material part of whose evidence is as follows:—

‘ It has occurred to me that, except in cases



‘ of high treason, murder, sodomy, arson, and  
‘ other offences accompanied with violence to  
‘ the person, the punishment of death may be  
‘ dispensed with under circumstances favour-  
‘ able to the administration of criminal justice.’

He had previously expressed himself thus :

‘ My experience has led me to draw this  
‘ conclusion, namely, that the punishment  
‘ should be such as would answer the ends of  
‘ justice ; and that the sentence of the laws  
‘ should be invariably (except in extreme cases)  
‘ carried into execution. It is more than 23  
‘ years ago since I brought under the review of  
‘ his Majesty’s government and the public at  
‘ large, a full exposition of my experience in  
‘ respect to crimes and punishments, in my  
‘ “ Treatise on the Police of the Metropolis,”  
‘ and suggesting remedies ; and I have the  
‘ satisfaction to know that whenever such reme-  
‘ dies for the prevention of crimes were adopt-  
‘ ed, they have completely succeeded ; almost  
‘ every imperfection in the criminal code, and  
‘ also in the system of police which has recently  
‘ been disclosed in the parliamentary reports,  
‘ will be found in that work.’—p. 65.

The Committee may be left in undisturbed possession of Dr. Colquhoun’s testimony, with whatever additional value it may derive from

his having been ‘ for twenty-seven years a police magistrate in this capital, and well known ‘ by his publications on such subjects.’ The doctor’s publications are now known too well, and the experience, suggestions, and conclusions, to which he alludes, valued too justly to require comment.

To these witnesses may be superadded Mr. Martin, member for Galway, who declares himself a strenuous adversary to capital punishment, especially in forgery, robbery, burglary, larceny in shops and dwelling-houses, and stealing of cattle and sheep. He says a man would be hooted at in Ireland that prosecuted capitally in burglaries and robberies without violence; that sheep stealing and cattle stealing are very frequent in his part of Ireland, ‘ but a man ‘ would meet with great censure who would ‘ prosecute a man so as to procure him to be ‘ hung for these offences, and they are almost ‘ always prosecuted with a view to recommend ‘ the person to mercy, that he shall not incur ‘ that penalty. To which of those three offences ‘ does your observation most apply? To sheep ‘ stealing, I think, generally. But, in short, I ‘ do not recollect a person to have been executed in my country for sheep stealing; it is ‘ not in my recollection.—And yet it is a fre-

‘quent offence? My estate is almost laid waste  
‘with it: people are afraid to put their sheep  
‘there at all, they are stolen so fast.—Would  
‘you prosecute with the utmost severity and  
‘industry if the punishment were any thing less  
‘than death? I certainly would desire of all  
‘things in the world to transport people where  
‘they steal sheep in great quantities, who make  
‘a trade of sheep stealing and do not take them  
‘for sustenance, I would certainly transport  
‘them.’ As mild punishment has hitherto completely failed in checking the evil complained of, we expected the witness to propose that capital punishment should be tried to see whether it would succeed better; but the opinions he has expressed are so diametrically opposite to those which the facts detailed by him seem to warrant, that we surmise the sheep stealers of Mr. Martin’s country are better acquainted with the principles of Criminal Law than the gentlemen whose sheep they steal. But whether this be so or not, it is surely not the least curious part of the Committee’s proceedings, that, with the avowed object of ascertaining the sentiments of the people of England respecting Criminal Laws, they have not required or received the evidence of one owner or occupier of land in England, even with respect to the offences which chiefly affect landed property,

and that the person whom they have chosen to guide them is a resident in one of the most remote and, by his own confession, most disorderly districts of Ireland.

The next witnesses in order are the four merchants and eight bankers formerly mentioned. The names of the merchants are Messrs. Goldsmidt, Wood, Wilkinson and Foster; and those of the bankers, Messrs. Foster, Fry, Smith, Hoare, Barnet, Bentall, Gurney, and Birkbeck, the first five of whom are bankers in London, and the remaining three bankers in the country. Some of these gentlemen bear witness to the reluctance which is felt by the public to prosecute capitally in any case whatever, but the testimony of all of them is confined principally, and of most of them exclusively, to the crime of forgery. Their almost unanimous opinion is, that it would be expedient to visit forgery and the uttering of forged instruments with some punishment short of death. There is at the same time a remark of Mr. Hoare's respecting reluctance to prosecute, which goes far to explain the testimony of all the bankers called, and of many of the other witnesses who have borne testimony to the general reluctance to prosecute in cases of forgery:—

‘ In the first instance there are their own

‘ feelings; their unwillingness, for the sake of  
‘ property, to take away the life of a fellow-  
‘ creature; added to their unwillingness, the  
‘ intercessions which are almost invariably made  
‘ by the friends and connections of the bankers;  
‘ for the individuals committing forgeries are  
‘ generally well known to the parties concerned,  
‘ and though they may feel comparatively little  
‘ reluctance in punishing strangers with death,  
‘ yet when they are in the habits of intercourse  
‘ with the friends of the individual who has  
‘ committed the offence, it becomes far more  
‘ painful.’—p. 145.

There can be no doubt of the truth or importance of Mr. Hoare’s statement, and one of the considerations most forcibly suggested by it and the rest of the evidence laid before the Committee, is the non-existence of a public prosecutor. On this subject I do not feel myself qualified to express an opinion. Considering the change it would make in the administration of criminal law, it is extremely difficult to say whether it would be wise to appoint such an officer or not. Such a measure would be somewhat hazardous, and not likely to be generally acceptable; but at the same time the want of some person to prosecute on the part of the public, irresistibly forces



itself on the attention in the course of almost every deposition which has been given. Reluctance to prosecute on the part of private persons is not by any means surprising. They are apt to be represented as acting from a vindictive spirit, rather than a regard to the public good; and, if conviction and execution should follow, however atrocious the criminal may be, his fate can hardly fail to create a painful sensation in the mind of the prosecutor at the moment, and sometimes a lasting impression that the blood of the criminal, who by his means has fallen a victim to the laws, will rest on his head for ever. In other offences, the prosecutor, before the trial comes on, has obtained all he aimed at by the prosecution, or finds he could get nothing more if he were to conduct it to its regular termination; and in a still more numerous class of cases, proceedings are dropt, merely because the patience of the prosecutor is exhausted by the disagreeable publicity and intercourse, trouble, delay, and expense which he has been obliged to encounter. These circumstances combined will account for the greatest part of the reluctance to prosecute, and distress experienced upon conviction, to which the witnesses have borne testimony, without supposing it to express any



opinion with respect to the present severity of the criminal law. From all I have seen and heard, I believe the result of a close and extensive investigation would shew, that three-fourths of those who have at first declined to prosecute or have stopt proceedings afterwards, have been swayed by private motives, and not by any apprehension of the nominal or actual punishment which might have ensued upon conviction.

Neither ought it to be altogether overlooked, that what the witnesses tell the Committee their feelings prompt them to do, or what their friends told them they should have done if in their stead, falls very short indeed of a deliberate opinion respecting the punishment which, in the judgment of such persons, ought to be affixed by law to the several crimes of which they had been speaking. Had an aggravated case of the offence in question been propounded to them, and had they been interrogated strictly whether, they think, that capital punishment ought in no such instance to follow, perhaps a different complexion would have been given to their depositions from that which they now wear. In the crime of forgery, this defect is peculiarly discernible. There is scarcely any crime, about the proper

punishment for which people differ so widely. Some think that forgery, or the uttering of forged instruments, ought not to be capitally punished in any case whatever; others, that capital punishment ought to be limited to the forging of bank notes only, which is an act implying extraordinary deliberation and contrivance, or to those instances where the crime has been committed to a large amount, where the offenders have been of bad character, or have been previously convicted of the same offence. It was manifestly requisite that the most precise questions possible should have been put to the witnesses, and equally precise answers exacted from them on each of these points, in order to ascertain fully and exactly their sentiments on the subject. Even if all the witnesses examined had unanimously objected to capital punishment, it might still be contended, that in a country where commercial confidence is carried to a pitch unparalleled in any other, a more extensive inquiry than that which the Committee has instituted, is indispensably necessary to settle on which side the preponderance of public opinion lies. There are 71 banking-houses in London, the partners in which probably amount to 284, and at least 250 houses in the country, whose partners may amount to 750 more,

making altogether 1034, in addition to perhaps 100,000 considerable manufacturers and merchants; and the few individuals examined, however respectable they may be, are surely not sufficiently numerous to satisfy the legislature of the prevailing opinion of so large a body in a matter of so great moment.

The last 19 witnesses consist of Mr. Baker, engineer at the Tower, and 18 tradesmen, viz. Josiah Condar, bookseller; Joseph Curtis, currier; Wendover Fry, type founder; John Gaun, general merchant and boot and shoe manufacturer; Richard Taylor, printer; James Soaper, profession not mentioned; Stephen Curtis, leather manufacturer; Ebenezer Johnson, ironmonger; Philip Jacob, ironmonger and stationer; Thomas Lewis, retired merchant; James Jennings, grocer; Samuel Garrett, insurance broker; Frederick and William Thornhill, hardwaremen; William Collins, glass manufacturer; and Sir Richard Phillips, bookseller and stationer.

What peculiarly qualified Mr. Baker to be a witness on this occasion, neither appears from his residence, profession, nor any other circumstance which transpires in the Report; but his evidence corresponds entirely with that of the other witnesses, whose names have just been

enumerated. They mention a variety of instances in which they and their friends have refused to prosecute, on account of the capital punishment attendant on conviction, especially in cases of forgery and in stealing from shops and dwelling-houses. Some of them say these sentiments are rapidly diffusing themselves; others state their own general opinions respecting criminal law; and all of them concur in recommending either the extreme restriction or total abolition of capital punishment. To extend or revive the notoriety of any particulars connected with individual history, though an unenviable is sometimes a necessary office. These witnesses have voluntarily placed themselves in a situation, in which their testimony may influence important legislative measures; and the public has an unquestionable right to know the character and capacity of those who have stood forward to instruct it upon this occasion. Some of them are persons of unquestionable respectability; but from the tone and language which pervades the evidence of others, it is impossible not to entertain suspicion, that they do not belong to that class in society to whom the Committee ought in such a case to have resorted for information, and are either weak or disingenuous in a more than ordi-

nary degree. One of them, who is announced by the Committee ‘as once sheriff as well as ‘often a juror,’ is spoken of by Sir Vicary Gibbs, then Attorney General, in the report of a trial instituted by Sir John Carr against Vernor and Hood in 1808, ‘as having given in evidence of ‘his being either one of the greatest fools that ‘ever lived under the sun, or that he is not to ‘be credited on his oath. I say it appears from ‘his own testimony, either that he has given in ‘false evidence, or that he is the greatest fool ‘that ever walked upon the earth without a ‘keeper.--*Lord Ellenborough, interposing--Weak-* ‘*est, perhaps.—Attorney General—(weakest.)* ‘The weakest man that ever walked upon the ‘face of the earth without a keeper. Erasmus ‘would have given any thing for him when he ‘wrote his *Encomion Moriaë*, or Pope when he ‘wrote his *Dunciad*.’ The case of another witness is still more worthy of attention. It may be proper to mention that upon the exportation of most articles upon which a duty is paid in any stage of the home manufacture, the whole or greatest part of the duty is returned to the exporter under the name of drawback. Here then is a field for the exertion of every sort of contrivance to overreach the officers of the revenue, and false entries of goods are made and



false descriptions of them given, in order that the exporter may receive duties from the public which neither he nor any previous owner of the goods has ever paid. Glass, having long been subject to a heavy duty, which was greatly increased in 1812, is one of the commodities in which fraud is most frequently practised. In one of these illicit adventures this witness had the misfortune to engage, in consequence of which informations were filed against him in Exchequer for the condemnation of broken and waste glass described as serviceable, of which 14 cases, containing 22 cwt. 1 qr. 9 lbs. were entered for exportation on the 21st of Nov. 1814, and other 64 cases, containing 93 cwt. 2 qrs. 13 lbs. on the 24th of the same month, in order to obtain various drawbacks amounting nearly to the sum of 500*l*. Upon these informations verdicts were obtained in 1816, for the condemnation of this broken and waste glass, although the 52 Geo. III. c. 77. § 5. requires the exporter to take an oath ‘ that he  
‘ believes the duty imposed by law for or in  
‘ respect of such glass intended to have been  
‘ exported to have been fully paid, and that  
‘ any person who shall be convicted of wilfully  
‘ taking a false oath, in any case in which the  
‘ above oath is required to be taken, shall be



‘liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.’ Though the facts now mentioned were disclosed in presence of a court of justice, the individual alluded to expresses himself as if the force of conscience had compelled him to deliver his sentiments before the Committee on Criminal Law, and he has succeeded in throwing round it an air of guileless and considerate benevolence, which has imposed on some of the ablest and acutest men in the kingdom. The world is at this time so overrun with philanthropic pretenders of every denomination, that it becomes an act of justice to expose what it would otherwise have been a duty to overlook, in order that their conceit and insufficiency may neither prove injurious to the public good, nor bring discredit upon the exertions of wiser and more consistent men.

An endeavour has now been made to present a distinct and accurate summary of the whole of the evidence which was produced before the Committee; and whether the number, capacity, profession, or condition of the witnesses is taken into account, it falls short of that satisfactory information it might have been expected to yield. When a marked alteration in the spirit and provisions of a whole system of law is in agitation, it is incumbent upon those by whom it

is promoted, not to begin the change until they have made application in every quarter from which effectual assistance may probably be received. This has not yet been done. Only one ex-judge has been examined, and when the different parts of his testimony are viewed in conjunction with one another, it by no means amounts to an approval of those principles of criminal legislation which the Committee appears to be chiefly solicitous to establish. In the absence of every attempt made by them to learn the sentiments of any other judicial character, we are referred generally to the authority of Sir Thomas More, Bacon, Coke, Chillingworth, Clarendon, Blackstone, Dunning, Franklin, Johnson, Pitt, Fox, and Sir William Grant; and whenever any individual thinks proper to assail any part of the existing criminal law, some part of this phalanx of illustrious names is sure to be brought up to his support. But, with the exception of Franklin, it may be doubted whether there is one of them who would have volunteered on such a service. They may have used language more or less strong against particular penal acts or undue severity of punishment in general; but casual observations never can be construed into a dislike of an entire class of laws, or an approval of a specific plan of reform, which at the time of using them, there

is no reason to believe any one of them had in contemplation. More anxiety has been shown to glean passages favourable to mitigation of punishment from the works of distinguished writers, than there is any occasion for. If they could be collected by thousands, they would not answer the purpose for which they are intended. No man can compress his opinions on criminal law within the compass of a few oracular sentences; and whoever has attempted it, demonstrates by that very means, that they are not worth the having.

The Committee have observed, that they have not thought proper to call for the opinions of the judges who now fill the bench, as ‘it appeared unbecoming and inconvenient that those whose office it is to execute the criminal law, should be called on to give an opinion whether it ought to be altered.’ This, if sincere, appears to be mistaken delicacy. If it had been thought inconsistent with their age or dignity to have appeared as witnesses at the bar of the Committee, their evidence might have been received in any other manner that might have been more agreeable and respectful; and as to the impropriety or inconvenience of those who execute the law giving any opinion about the alteration of it, that seems a consideration for which there is no foundation in reality.

All who have any acquaintance with courts either of common law or equity must frequently have heard judges express a wish for the repeal or alteration of laws which they were executing; and though they never had done so in words, it is notorious that they continually do it by their practice. A judge on the circuit who rescues a criminal from the grasp of a penal statute, may and frequently does announce what opinion he entertains of its expediency, as distinctly as he could have done by the most formal avowal of his sentiments. By declining to consult the judges, the Committee have deprived themselves of the assistance of those who, unless they are unworthy of the distinguished station which they occupy, were most peculiarly qualified to instruct them.

It would also have been desirable that the Committee had called in the aid of a greater number of barristers, especially of those who are conversant with the proceedings of criminal courts. It has often been objected to lawyers, that they begin their professional life with narrow views of the principles of law, which practice only renders more contracted. The remark is not without foundation, but has on many occasions been pushed to an extent greatly exceeding what the truth will warrant.

They are usually men of good education and understanding; and it is not passing too high an eulogium upon them to assert, that two or three of them might have been selected from each circuit, whose experience, liberality and reflection would have entitled their opinion on matters of criminal law to as much attention as that of any witnesses who could have been called before the Committee; while their constant communication with prosecutors and defendants qualifies them better than the same number of any other class of persons, to make known the sentiments which prevail in different parts of England upon such subjects.

Besides judges and barristers, it would also have been advisable to have examined agricultural and mercantile persons belonging to every rank in society, who are likely to be affected by the projected change. Instead of this, there is not a single English gentleman, clergyman, magistrate, yeoman, or partner in any commercial concern carried on in the country, who has either presented himself, or been sought for. The only effective support on which the framers of the Report can rely, consists of 8 bankers, 4 merchants, 18 tradesmen and shopkeepers, 1 equity barrister, 1 retired police magistrate, 1 engineer in the Tower,



1 Old Bailey solicitor, and Mr. Martin, member for the county of Galway. On so slender a body of evidence as this, and so selected, it is surely premature to infer what the general sentiments of the people of England are, with respect to the general spirit or particular enactments of the present criminal law.

Nearly two years have elapsed since the Committee closed its sittings, and no inclination has been manifested to renew them. Had any disposition appeared in the course of that interval to admit the imperfections of the evidence produced before it, the preceding long and uninteresting examination of its contents should now have been withdrawn. The purpose which it was intended to serve would have been answered, and all further controversy about "the prevailing sentiments of the people of England" would have ceased, without injury, as it appears to me, to the cause of those who urge the abolition or extreme restriction of capital punishment, and to the great advancement of fair and free deliberation on the subject. No concession or acknowledgment of any kind, however, has been made. On the contrary, Mr. Buxton, Sir James Macintosh, and Mr. John Smith, in the debate which took place in the House of Commons during the session of 1821, all defended



it in a more or less guarded manner, and seem still to rely upon it as affording satisfactory proof of the expediency of the measures which they wish to carry into execution.

Mr. Buxton, at page 44 of the printed speech, expresses himself to the following effect: ‘ But  
‘ the writer of that Review entirely miscon-  
‘ ceives the drift of our Committee in the evi-  
‘ dence they took. He seems to deem it  
‘ their duty, and what is still stranger, supposes  
‘ it to be their intention, to collect upon each  
‘ particular penal law which they proposed to  
‘ repeal, a large body of facts, related by a  
‘ large body of witnesses, all tending to show  
‘ that in this special instance the severity of the  
‘ law deadens its execution. Now among a  
‘ multitude of good reasons why the Committee  
‘ did not adopt this course, one perhaps will be  
‘ sufficient for the House; namely, that it was  
‘ utterly impossible. The examination of some  
‘ thousand witnesses which it supposes—that  
‘ examination going on for the next century,  
‘ contained in volumes outstripping the very  
‘ statutes themselves in bulk and number, are  
‘ very final objections to this mode of proceed-  
‘ ing. Our object was to establish certain main  
‘ principles, which, if true, are decisive on the  
‘ *general* question. In cases unattended with

‘ violence, is there or is there not, so positive  
‘ a reluctance on the part of the public to give  
‘ evidence and to convict, as materially impedes  
‘ the course of justice ? That is the question  
‘ to which we sought an answer from our wit-  
‘ nesses.’

If either the *duty* or *intention* of the Committee was misconceived, it has been unintentionally. I knew nothing of either, but from the Committee’s own words, which it may not be improper in this place to repeat. ‘ The object of the  
‘ Committee has been to ascertain, as far as the  
‘ nature of the case admitted by evidence,  
‘ whether, in the present state of the people of  
‘ England, capital punishment in most cases of  
‘ offences unaccompanied with violence, be a  
‘ necessary, or even the most effectual security  
‘ against crimes.’ Concluding, though in this instance it seems erroneously, that the *duty* and *object* of the Committee must be synonymous terms, I took it for granted that there could be no doubt of its being the *intention* of the Committee to fulfil its *duty*. It has not yet been shown how that could have been adequately performed otherwise than by examining a sufficient number of unexceptionable witnesses from different parts of England, respecting each particular law which the Committee wished to repeal. To

establish in criminal law, what Mr. Buxton has in his speech termed ‘*a main principle*,’ seems beyond the reach of possibility. Take, for example, the crime of forgery, or larceny. The feelings which actuate a certain portion of bankers, traders, and shopkeepers in London with regard to these offences, can form no criterion of the feelings which prevail respecting these or any other offences, such as arson, sheep-stealing, and horse-stealing, in Norfolk, Suffolk, Shropshire, or Northumberland. The expediency, or inexpediency of all the separate enactments of a penal code cannot be determined by the application of one or two abstract maxims. Each of these enactments has been submitted by itself to the consideration of the people of England, and received the approbation of their representatives before it passed into a law, and each must again undergo a similar examination before it can be ascertained whether, according to the prevailing sentiments of the public, it would be expedient to abolish it. If it be true, as has been urged, that such a course of examination would never have come to a conclusion, a stronger reason could not be suggested why it should have had no beginning. To ascertain ‘the present sentiments of the people of England’ must always be a formidable

undertaking, and on subjects of a complicated nature it will never be advisable to attempt it. That the members of a representative body should be well acquainted with the sentiments of their constituents is evidently most desirable, but neither in substance nor appearance can they admit them to any participation of legislative power, without a diminution of that respect which ought to be paid to their character, and confidence which should be reposed in their judgment. Perhaps some such effect is perceptible in this very instance. The tenor of the whole examinations impresses the reader with a conviction that the Committee have called for the sentiments of the public in a manner which gives them too much the air of instructions by which the deliberations of the legislature ought to be governed, and not a few of the witnesses have communicated them with as much dogmatism as if they ought to be received with that consideration. Dangerous, however, and unprecedented as this course of examination seems to be, it has not been carried far enough to justify the Committee in saying what the prevailing sentiments of the people of England are. That there is a numerous, active, and respectable party in the country, who entertain objections to the punishments now imposed by the criminal law is beyond all doubt,

but whether the opinions which they entertain are those which prevail throughout the mass of the population, has not yet been ascertained. The few witnesses who were examined, had no right to speak for the whole people of England, and their forwardness to do so formed a solid reason for resisting their pretensions. Of the 51 effective witnesses who have appeared, 48 are resident in London, or connected with it, and excepting some unimportant observations of Sir Archibald Macdonald and Mr. Evans, all the information with which we are furnished respecting the general feeling of the kingdom is derived from the three following persons. Mr. Philip Jacob had been a journey of 10 weeks into the southern and western counties, in the course of which he had spoken with many intelligent persons with whom he is in the habit of dealing in business, chiefly ironmongers and stationers;—Mr. James Jennings, the grocer, undertakes to speak for the land-owners and farmers of Somersetshire;—and Mr. Martin, of Galway in Ireland, is left to answer for the rest of all England. It requires a strong predisposition to believe in *certain main principles* or *prevailing sentiments*, before such testimony, whether weighed or numbered, can be thought sufficient to establish either.

Sir James Macintosh, at page 968 of Vol. v.



of Hansard's Debates, is reported on this point to have expressed himself thus: 'he would fearlessly say there never was an examination conducted with more fairness and impartiality.' Nothing more is here done than to oppose a general averment to specific objections which have been stated and of which the proofs have been produced. The chief of these objections are, that many questions were omitted which ought to have been put, and that those which were put to the witnesses, were, neither in form nor substance, properly calculated for ascertaining the sentiments of the people of England on the points to which they related. Whether these objections have been substantiated or not, it is to be presumed the minutes of evidence will enable its readers to form as competent a judgment as if they had heard the evidence actually given; and the statement of Sir James Macintosh can as little change the substance of the facts which they exhibit, as it has attempted to refute or invalidate the reasoning which has been founded upon them. Upon the manner in which the witnesses were collected, which is a point at least as material as the conduct of their examination, both Sir James Macintosh and Mr. Buxton have abstained from speaking.

Mr. John Smith has thought proper to supply



this deficiency. In the debate above alluded to, he is reported to have spoken to the following effect: ‘he would not enter into a detail of that report, but he would state that the individuals who gave evidence before the Committee *were fairly collected*, and were supposed to be individuals extremely well acquainted with the nature, application, and effects of the criminal law, particularly with respect to the crime of forgery.’ The words of Mr. Smith may have been misreported, and instead of ‘*the individuals* who gave evidence,’ he may have meant only *some of these individuals*;—he may have used the words ‘*fairly collected*,’ in a sense or for a purpose somewhat peculiar;—or stronger expressions may have escaped him in the course of argument than those which he intended to employ. There would be no satisfaction in supposing that a gentleman of Mr. Smith’s character and candour meant to expose himself to the risk of maintaining this desperate position, that *the whole of the individuals* who gave evidence could be said to be *fairly collected* in any acceptation in which these terms could be properly used on such a subject and occasion. The Solicitor-General stated without hesitation, that ‘a large number of reputable persons were known to be averse to capital punishments who had been eager in

‘ the pursuit of their object, and *had pressed themselves* on the Committee to give evidence ;’ and the whole drift of the evidence so strongly corroborates this statement, as well as the particular circumstances which have in the previous part of this inquiry been relied upon, that until an explanation is given of the means by which these witnesses really were assembled, the most confident contrary asseveration cannot possibly prevail against it.

It has, however, been urged, that if there is any insufficiency in the evidence laid before the Committee, it is amply supplied by the petitions presented to parliament in 1821, which conclusively show the prevailing sentiments of the people of England to coincide with the representation which is given of them in the Report. Mr. William Courtenay says, ‘ It was right that parliament should look to the state of the public mind, which was manifested by the number of petitions which had been presented from time to time.’ *Hansard’s Debates*, Vol. v. p. 961. Sir James Macintosh says, p. 968, ‘ and here he would beg to remind the House of the various petitions presented in favour of a revision of the penal code—these petitions were signed by upwards of 30,000 persons—by men of all parties—by men

‘strongly attached to ministers—by merchants, traders, shopkeepers, and artizans, by those who were the principal sufferers from forgery, larceny, and fraud; by those from whom petit jurors were always selected. All those persons, having no political bias whatever, had strongly expressed their opinion in favour of an alteration in the penal code. So much to the testimony of the country.’

The art and mystery of procuring petitions is seldom talked of within the walls of parliament, and yet there is none which is better understood or more generally practised. Whenever any set of men are anxious to promote or obstruct a particular pending measure, one of their first concerns is to fortify themselves with a decent supply of petitions in their favour. The means are then thought of by which they are to be obtained. London is usually pitched upon as the most convenient seat of operations, officers are selected for carrying on the correspondence, drafts of petitions are prepared, and copies of them forwarded to all parts of the country where there is the smallest chance of their being received with attention. There they are circulated and signed, returned and presented to parliament, then printed, and at last are ushered into the world, as a faithful

index of the deliberate and unsophisticated sentiments of the whole people of England. It is much to be lamented that those who have the christian religion on their lips and ought in a peculiar manner to exemplify its simplicity and rectitude in their conduct, should sometimes show as little repugnance to adopt this equivocal policy when it will contribute to the furtherance of their views, as those who profess to be guided by no higher motives than those of mere worldly interest. I believe it will not be denied, that recourse has been had to it in the present instance. I have met with persons who have seen petitions ready drawn before they were sent into the country and well knew the machinery which was put in motion to promote subscriptions to them, but have invariably found them unwilling to communicate the smallest information respecting the individuals who were engaged in such a work. It is this mystery and management which accords so ill with the cause which it is made to support. Petitions are presented from various and distant quarters of the country; supposed by many to be the unasked, untaught sentiments of those whose names are attached to them; and several members of parliament, ignorant perhaps of what has been passing, in substance declare

them to be so. All this while, that party, by whose instrumentality alone the greater part or the whole of these petitions have been procured, not only conceal what they have done, but do every thing in their power to induce a belief that little or nothing has been done for such a purpose by them or any other person. The following letters, which appeared in a country newspaper in the early part of 1821, will probably be thought to throw as much light as is necessary on this part of the subject.

*‘ To the Editor of the Royal Cornwall Gazette.*

*‘ Jordan House, Penzance, Feb. 11.*

*‘ SIR,*

*‘ THE patient but persevering and zealous persons who have laboured so successfully in the abolition of the slave trade, and the improved discipline of British prisons, are now actually engaged in revising respectful applications to both Houses of Parliament, that a revision of our penal code relative to capital punishments, may take place. I have just received the following judicious communication from London on this subject, and as it does not interfere with any party question, which at present agitates the public mind, but is purely an appeal to humanity, and a laudable attempt to*



‘ promote the respectability of British jurisprudence ; I have to solicit its insertion in your County paper. Should persons in the County who have not any correspondence with the metropolis on the business, be inclined to promote petitions, any information I can give will be at their service. A line addressed as above will meet with respectful attention,

‘ I remain, your’s respectfully,

‘ G. C. SMITH.’

‘ *London, January 13, 1821.*

‘ SIR,

‘ NEARLY two years since, some friends to the revision of our penal code addressed to their correspondents in various parts of the country, a letter calling their attention to the frequency of the infliction of capital punishments, and the failure of such severity to prevent the increase of crime. The City of London had already presented a petition to Parliament, praying their immediate and serious consideration of a subject so important to the community. Since that period a considerable number of petitions have been presented, and the House of Commons has instituted a very extensive investigation into the effects of



‘ the punishment of death, with a view of substituting some other punishment for particular crimes. Some acts have already received the sanction of the legislature repealing capital punishment in cases where indeed, if ever, it has rarely been inflicted, and where, in the almost unanimous judgment of parliament, the offence did not warrant the taking away of life. In the most important classes of crimes, however, nothing has been done to ameliorate the law, and recent experience shows us that repeated and constant exertions are by some still deemed necessary and expedient, though we look in vain to any proof of the efficacy of a system so repugnant to humanity. It is very desirable that the public attention should be again called to this question, on which so justly depend the safety and property, and the lives of so many of our fellow creatures, and should those with whom you are in the habits of acquaintance unite in thinking that the punishment of death might in many cases be safely abolished, and other modes of punishment substituted, without endangering either life or property, it would most materially tend to ensure an attentive consideration of the subject, and the adoption of the most

‘advisable measures, if they would express  
‘their opinions by petitions to both Houses of  
‘Parliament.

‘The following are among some of the rea-  
‘sons for the diminution of capital punishment  
‘which were suggested on a former occasion.—  
‘1. That the perpetration of crimes ought to be  
‘repressed by punishments the most lenient,  
‘provided they are equally efficacious, which is  
‘most consonant to the humane doctrines of our  
‘christian faith, and to the express declaration  
‘of Him who hath said, ‘*I will have mercy and  
‘not sacrifice.*’—2. *That the infliction of capital  
‘punishment is not efficacious for the prevention of  
‘crime, but on the contrary the efficacy of that  
‘penalty to a vast variety of offences, differing most  
‘widely in their degree of moral guilt, tends to im-  
‘punity, and consequently to the increase of crime:*  
‘that this position is proved by experience,  
‘crime having since 1805 increased in the ratio of  
‘three and a half to one, which cannot be satis-  
‘factorily accounted for by ascribing it to any  
‘temporary causes; that daily experience shows  
‘us that the judges and advisers of the crown cannot  
‘execute the law, because of its undue severity; that  
‘prosecutors for the same reason will not prosecute,  
‘witnesses will not come forward, or will endea-  
‘vour to shape their evidence not to the strict

‘ truth, but to the side of mercy, and that juries  
‘ will, instead of considering guilty or not  
‘ guilty, weigh whether the alleged crime de-  
‘ serves the legal punishment, and find their ver-  
‘ dict accordingly: that the consequence is,  
‘ *crime flourishes and blood is shed in vain.*—3.  
‘ That capital punishment is irremediable, and  
‘ all human tribunals fallible; that sometimes  
‘ the innocent suffer, and in the time of Lord  
‘ Hale, no less than six did suffer at our as-  
‘ sizes, as he himself has declared, and that it  
‘ is not in the power of man, who thus violently  
‘ wields the authority of God, to make retri-  
‘ bution.—4. *That a repetition of these barbarous*  
‘ *spectacles hardens and demoralizes, and debases*  
‘ *those who attend them*; that though they may on  
‘ some occasions deter by fear, yet that such a  
‘ power of preventing crime is much over-  
‘ balanced by the disinclination of persons  
‘ aggrieved to resort to law, where the life of a  
‘ fellow creature is the forfeit; that therefore  
‘ the total impunity arising from affixing death  
‘ as a punishment, is much more injurious to  
‘ honesty and morality, than the fear excited by  
‘ executions is beneficial.—5. That many of our  
‘ penal laws took their rise in ignorant and  
‘ savage times, and are now utterly repugnant  
‘ to the general feeling of society, and are no

‘ more adapted to the present day than the re-  
‘ newal of bonfires at Smithfield, or trials by  
‘ battle. That Englishmen of the 19th century  
‘ require a system consonant to their religion,  
‘ proportioned to the moral guilt of the offender,  
‘ and such as every merciful individual can  
‘ with justice to his own conscience be the  
‘ agent of inflicting upon the guilty, and yet say  
‘ with truth, “ I do as I would be done unto.”—  
‘ 6. That the present penal laws of this country  
‘ deserve not the appellation of a system, be-  
‘ ing formed on no fixed principles of justice  
‘ or gradations of crime, confounding treason  
‘ and murder with breaches of trust, and acts of  
‘ mere dishonesty; thus protecting, or rather  
‘ purporting to protect the loss of property by  
‘ the same punishment as life and limb. *That*  
‘ *the wisest statesmen, the ablest philosophers, and*  
‘ *the most experienced lawyers,* have all joined in  
‘ deprecating such unnatural severity and dis-  
‘ regard of life, and very many of them with Sir  
‘ W. Blackstone, who declared, that had a com-  
‘ mittee been appointed but once in a hundred  
‘ years to revise the criminal laws, it could not  
‘ have continued to this hour a felony without  
‘ benefit of clergy to be seen for one month in  
‘ company with gipsies.’

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The preceding letters and instructions have been given entire, in order that the connection between them, and the petitions which have since been laid before parliament, may be put beyond dispute. The letters prove the perseverance and activity with which the instructions have been circulated, and the petitions afford equally conclusive evidence of the effects with which they have been followed. Those who take the pains to peruse the whole fifty or fifty-one petitions, which during the session of 1821 were laid before the House of Commons for the revision and mitigation of the criminal law will find that only four or five of them can be truly said to be drawn up with ordinary judgment or discretion, or bear any marks of having been dictated by the genuine sentiments or feelings of the persons resident on the spot where they purport to have been drawn up. Every one of the others has more or less closely, or at more or less length, adopted the arguments and expressions to be found in the circular of Mr. Smith's 'patient but persevering and zealous persons;' and so minutely follows even the exaggerations and mistakes of that portion of the instructions which it happens to resemble, that the coincidence raises the most violent possible presumption of its



being the original from which the whole of these petitions were copied. When the number of places to which these instructions may have been sent, and the unsparing exertions which have been taken to promote their object, are taken into account, it ought rather to create surprise that they are so few, than that they should be so many. Looking at them as they are, however, they are entitled to respect, and there is no desire entertained to deprive them of any portion of that consideration to which they may be thought entitled when their history comes to be fully known. It is only maintained, that there is no foundation whatever for representing the petitions hitherto presented to parliament, almost the whole of which appear to have been drawn up by the hands, or at the express solicitation, of the friends and members of an extremely active, though not political, party, and signed by individuals more remarkable perhaps for easiness of nature than comprehensiveness of understanding, as an adequate testimony of the general feelings respecting criminal law which pervades the country.

It has been asked, if these petitions do not express the general sentiments of the country, how happens it that none have been presented of an opposite tendency? Because there never



is the same degree of union and alacrity among those who defend laws as in those who attack them, and because the mass of the people, never having bestowed much attention on crimes and punishments, leave the regulation of them, as they ought to do, to the legislature. Only two petitions of that sort were last year laid before the House of Commons; but when a sufficient estimate has been made of the number, wealth, and character of the persons by whom they were subscribed, and the interest which they had at stake when they were presented, they will be found to form a counter-balance to the whole catalogue of those which pray for a general and indefinite mitigation of the penal law.

One of the petitions came from the bankers of London, and the other from the bankers of Bristol, two of the most wealthy and intelligent bodies in the country, and were signed by a very large proportion of the most respectable individuals of which they consist. It is true these petitions relate only to forgery, and their ostensible object is to declare to the House, that, in the judgment of the petitioners, it would be highly inexpedient to punish forgeries on private bankers less severely than forgeries on the bank of England. But there is another

and much more important opinion which they involve as distinctly though somewhat more indirectly. It is, that the punishment for forgery on private bankers, proposed by the bill of 1821, was really insufficient to prevent the commission of the crime. The steps which they took were unnecessary and absurd on any other supposition. The punishment which it was proposed to substitute for death in case of private forgeries, was fourteen years imprisonment with hard labour. This punishment would either have been sufficient to prevent private forgeries, or it would not. If it would not, forgeries would still have been committed on private bankers, although forgery on the Bank of England might at the same time have been committed with absolute impunity. If it would, it could have made no difference to private bankers, though forgery on the Bank of England had been rendered absolutely impossible. Had they regarded that security which was proposed to be given to them as sufficient, they could with no propriety have complained, though that of the Bank of England had been still greater. To take it for granted that forgers will prefer running the risk of the lighter punishment than the heavier, is extremely reasonable; but to suppose also that forgery

would still be practised, even although the lighter punishment were sufficient to prevent it, is too palpable an absurdity to suppose that men of so much acuteness as the petitioners could be guilty of it. There can be little doubt, therefore, that they really thought fourteen years imprisonment with hard labour an insufficient punishment for forgery on private persons, but that as they well knew there was little prospect that capital punishment for forgery on the Bank of England would be abolished, it was an equally efficacious and less invidious request, that forgery on private bankers might be punished in the same manner with forgery on the Bank of England, instead of praying generally that forgeries on private bankers might still continue capital.

These petitions of the bankers also show how difficult it is to form any just notion of the prevailing sentiments of the people of England on the punishment of any particular offence. While petitions in favour of abolition of capital punishment in forgery and other cases were flowing in from those who could be but remotely affected by the alteration of the law, the persons whom the bill most materially concerned did not express their disapprobation of it till almost the last day within which they were permitted to

do so. If a class of men possessing peculiar power and opportunity of protecting their own interests, were so tardy in taking any steps for that purpose, it is a very possible supposition that objections to projected changes in other branches of the criminal law may generally prevail among other ranks of the community, though they have never dreamt of petitioning in order to make their opinions known? But the members of the House of Commons may by this time have come to perceive, that instead of endeavouring to ascertain the sentiments of the whole people of England about criminal law, they might be more profitably employed in endeavouring to ascertain their own. The precipitation and inconsistency which marked the whole train of their discussions with respect to the punishment of forgery in 1821, show their opinions on some of the most important points in the whole range of penal jurisprudence, to be to the last degree vague, wavering, and unconnected. When the bill for abolishing capital punishment in cases of forgery was introduced, what was called *its principle* was received with acclamations by many members, and the bill itself met with a favourable reception from a majority of those who were present in the House. As the discussion advanced, and the

effects of this recognised *principle* began to be more distinctly perceived, doubts sprung up respecting the expediency of one of its provisions after another, and even Dr. Lushington, if the report in the Times newspaper of what he said on the 24th of May be correct, felt so little confidence in its efficacy, that he talked of the measure merely '*as a great experiment which was going to be made upon the commercial world.*' At each step fresh difficulties arose and exemptions multiplied, and before the bill was thrown out altogether, that which the House had begun by establishing as a *principle*, they had themselves imperceptibly deprived of almost all *particular application*.

Whatever course the House of Commons may hereafter think proper to pursue for the improvement of Criminal Law, it is greatly to be desired both for its own credit and the good of the country, that it should be circumspect and steady. Nothing is more unbeseeming to the character of a deliberate assembly, than rashly to assent to more lofty resolutions at the outset, than upon more mature reflection it is found possible to reduce to practice. Sooner or later it must condescend to retrace its steps, and if there is one instance more than another in which this is sure to happen, it is where gene-



ral rules have been laid down for the punishment of all offences of the same name, without having sufficiently attended to their different natures and varieties. This mistake is a natural consequence of that ardent sanguine turn of mind which is visible throughout the evidence given before the Committee, the Report, and the petitions laid before parliament. The real improvement of criminal law will advance but slowly until this enthusiasm has subsided, and until those who promote reformation are willing to content themselves with such ameliorations as prudence and experience will allow to be introduced into this intricate branch of civil policy.

2. We come now to the consideration of the the second and last general proposition which is intimated in the Report, that the punishment of death may hereafter be superseded by an improved system of transportation and imprisonment.

It is now somewhat more than half a century since Beccaria published his *Essay on Crimes and Punishments*, one of the earliest works by which the attention of the world was much drawn to criminal jurisprudence, and in which the necessity of the infliction of death, in any case whatever, was first distinctly called in question. This treatise contains many acute



and just general observations, but applies chiefly to the codes of criminal law which at the date of its appearance were in force throughout the states of Italy ; and its principal value, in the present day, must be admitted, even by its greatest admirers, to consist not so much in what the author has himself done, as in what he taught others to do. His just aversion to the cruelty which marked the administration of criminal justice in his own country has driven him into an opposite extreme, and in several passages he suffers language to escape him, which cannot fail to bring the whole of his doctrines into suspicion with those who reverence the foundations on which the good order of society has hitherto been supposed to rest. Such as his doctrines were, however, they were approved and followed by some of the most popular and powerful princes who then reigned in Europe. The Grand Duke Leopold of Tuscany took the lead in the career of reform, and from the success which that sovereign says attended the first steps he took to mitigate the penal code of his dominions, he was induced, on the 30th of November, 1786, to issue the celebrated edict from Pisa, by which he proclaimed the total abolition of capital punishment throughout the states of Flo-

rence. In the preamble to the edict he expresses himself to the following effect:

‘ Con la piu grande sodisfazione del nostro  
‘ paterno cuore abbiamo finalmente riconosciuto  
‘ che la mitigazione delle pene congiunta con la  
‘ piu esatta vigilanza per prevenire le ree  
‘ azioni, e mediante la celere spedizione dei  
‘ processi, e la prontezza e sicurezza della pena  
‘ dei veri delinquenti, in vece di accrescere il  
‘ numero dei delitti, ha considerabilmente dimi-  
‘ nuiti i più comuni, e resi quasi inauditi gli  
‘ atroci, e quindi siamo venuto nella determina-  
‘ zione di non più lungamente differire la ri-  
‘ forma della legislazione criminale, con la quale  
‘ abolita per massima costante la pena di morte,  
‘ come non necessaria per il fine propostosi  
‘ dalla società nella punizione dei rei,’ &c.

Whether crimes had really diminished to the extent here described may not be altogether certain, but there can be no doubt that Tuscany, under his administration, enjoyed a degree of tranquillity and prosperity, which will cause his name to be transmitted, as *the good Leopold*, to remote posterity. But it is a mistake to suppose that the changes effected by him in the penal code were the only causes to which this happy state of things was owing. He at the same time essentially improved other

branches of the law, as well as the executive government, and commercial regulations; and when a number of simultaneous measures, whether ultimately beneficial or not, concur in the mean while to ameliorate the civil and political condition of a country, it is difficult to determine what precise share of merit ought to be ascribed to each. Neither was the new system tried for a sufficient length of time in order to judge fairly of its efficacy. Within ten years from the promulgation of the edict, the progress of the French arms disturbed, and soon afterwards finally stopped its operation: and none who are acquainted with the slow effects of any change in law or government, will think this period sufficient to afford conclusive evidence of the success of so bold an experiment.

Leopold's brother, Joseph, was perhaps a still more indefatigable legislator than himself, and equally zealous in his endeavours to promote the same mitigation of punishment throughout his various states; but he was thwarted in his schemes by different orders of his subjects, and instead of the total abolition of capital punishment, could only effectuate its extreme restriction. Since the promulgation of the new Austrian penal code in 1787, it has been at least

twice subsequently altered, and is said to be again under revision. This does not lead one to suppose that it has given much satisfaction in any of the forms into which it has hitherto been moulded, and I have heard, from what might be considered competent authority, that the gaols in Austria are at this time insufficient to contain the prisoners and convicts; and that the number of executions at Vienna is greater in proportion to its population, than that which has for several years back taken place in London.

The Empress Catherine affected the same admiration for the new doctrines as Leopold and Joseph, and she also abolished capital punishment by public proclamation; but whether the Autocrat of all the Russias at that time either invariably enjoined or could practically enforce a due execution of the letter of the law throughout her vast and partially civilized dominions, it would not be easy accurately to determine. I have always heard it stated, however, that this abolition was but an empty declaration, and that the *knout without reserve* was as certainly fatal to the criminal condemned to sustain it, as the most undisguised sentence of death could have been. As the *knout without reserve* is now said to be disused, capital

punishment would appear to be really as well as nominally repealed, unless consignment for life to the bottom of a mine in Siberia may be regarded as one of its varieties. Whether the penal laws of Russia, however, are, upon the whole, gentle or severe, few persons out of that kingdom are qualified to speak with accuracy. No code has hitherto been drawn up, nor any collection of criminal laws printed. Those to whom their administration is committed, select that ukase which they believe most applicable to the particular case, from the thousands which have proceeded from the will of the sovereign, or a new one is framed expressly for the occasion, when any new combination of circumstances is thought to demand it. The facts respecting the increase or diminution of the number and degree of offences in Russia at different periods, are also too scanty on which to found any important conclusion respecting the wisdom of the systems which have been there successively in operation.

The late revolution which changed so many things in France, also softened to a remarkable degree its criminal law; but the unsettled state of that kingdom ever since the mitigation took place, prevents any certain inference from being drawn respecting its ultimate effects.



It is mentioned, however, that several alterations have been made upon the new system of law since it was first introduced, and if that should be the case it shows that it can hardly yet be deemed to rest upon a permanent foundation. From some facts which have come within my own knowledge, and on which I think dependence may be placed, I suspect it will be found that crimes have of late years increased in France both in number and enormity, and though it would be unreasonable, merely because this state of things exists, to ascribe it to the provisions of the existing law, yet if the facts alluded to should prove authentic, it must be admitted on the other that this kingdom exhibits none of the advantages with which a diminution of capital offences is said to be attended.

A great mitigation of penal law has also taken place in Pennsylvania, New York, and some of the other United States of North America. Several documents are printed in the Appendix to Mr. Roscoe's Treatise on Penal Jurisprudence, which contain the latest and most authentic information I have seen respecting the effects of this alteration, but the particulars they supply are in every point too scanty to allow any conjecture to be drawn, whether



it will be practicable to maintain the good order of the country by means of the mitigated punishments which are now in use. The admissions to be found at pages 23 and 53 of the Appendix alluded to, which have been made by those who are professedly friendly to the extreme restriction or abolition of capital punishment, and the general bearing of the facts disclosed in the documents, render the point exceedingly problematical.

Bavaria is another of the states which, for a few years, made trial of the extreme restriction of capital punishment. In the course of 1821, however, the following passage appeared in page 346 of the second number of the *Annales de Législation*, a work confined entirely to subjects of jurisprudence, which is periodically published at Geneva. ‘ En Allemagne on s’est occupé avec profondeur de rechercher les bases sur lesquelles devaient reposer la législation pénale, les sources de droit de punir, et la manière la plus efficace de l’employer. Les travaux de ces savans juriconsultes contiennent des trésors à exploiter; il serait intéressant de faire passer aux autres nations la connaissance de leurs divers systèmes. Parmi les écrivains qui se sont distingués dans cette carrière, M. de Feuerbach tient sans contre-

‘ dit le premier rang; c’est à lui que la Bavière  
‘ doit son code public en 1813; et s’il est vrai  
‘ que, malgré tous les soins et toutes les pré-  
‘ cautions prises pour rendre cet ouvrage le  
‘ plus parfait possible, il a fallu dans si peu  
‘ d’années y ajouter *plus de cent nouvelles*; il est  
‘ certain, que ceux qui ne nous croient pas  
‘ propres à créer des législations nouvelles  
‘ pourraient tirer de ce fait un argument au  
‘ moins spécieux.’ They unquestionably might;  
and if, as the tone of this extract renders probable, these *nouvelles* should indicate a tendency to return to that severity of punishment, from which M. Feuerbach had departed, it affords good ground for those to pause who have not yet launched out into the open ocean of reform.

Some of the mildest penal codes have now been adverted to, which are known among the States of Europe; and though it is proper to speak of them with that caution which every one will do who has experienced the difficulty of procuring satisfactory and exact information on such a subject, yet one may venture to affirm, that neither singly nor collectively taken, do they afford conclusive evidence that the entire abolition or extreme restriction of capital punishment has yet been fully and successfully tried.

It is also indispensably requisite to consider what punishments can be substituted in those cases in which it has been suggested that death should no longer be inflicted. Mr. Buxton says ‘he is prepared to state that imprisonment, with hard labour, and occasional solitary confinement, and constant inspection, and rigid discipline, is, in fact, the punishment required.’ If he should be thought to have here mistaken a description of the object for the attainment of it, the course he follows is at least clear and consistent. Entertaining the conviction which he has expressed, he was bound to the utmost of his power to promote the introduction of this system on which he places so much reliance. The two following gentlemen, who took part in the same debate, stand in a widely different situation. Mr. W. Courtenay observes, in speaking of the bill which was introduced for the abolition of capital punishment for forgery, ‘one argument urged against the proposed bill had given him considerable pain, namely, that the punishment of death ought to be continued, because we were deficient in effectual secondary punishments. Now he could not consent to the continuance of capital punishments on such grounds.’ Adverting to the punishment of

transportation, Mr. Wilmot still more energetically observed, ‘that every body allowed that ‘it was practically inoperative. It was an additional reason with him in voting for this bill, *‘that it would compel the legislature to look out ‘for some secondary punishment more effectual.’* Among all the theoretical volumes which have been written in ancient or modern times on the government of mankind, there is not to be found a more alarming principle of legislation, than that which is here practically adopted by these two members of the House of Commons. To withhold countenance and support from those who resist, postpone, or discourage improvements which might with reasonable skill and energy be introduced, is not only justifiable but highly patriotic; but to do this not only without pretending to know whether such improvements can be introduced or not, but when it is known that the most persevering efforts which have been used for that purpose have failed of effect, is both stubborn and preposterous. Whatever the nature of the ties may be by which the good order and tranquillity of society is maintained, they cannot in prudence be dissolved till others are provided in their stead. Yet this is what many persons are anxious to do, who do not believe, with

Mr. Buxton, in the efficacy of imprisonment and hard labour, and yet are impatient to force forward the extreme mitigation of criminal law. They admit the discovery of a secondary punishment to be still a desideratum, and yet they would immediately either abrogate or greatly restrict capital punishment, in blind expectation that some succedaneum may at a future period be discovered to supply its place.

It is the want of this secondary punishment, however, which always has been, and is likely to remain, an insurmountable objection to the desired mitigation of criminal law. A numerous list of writers, of whom Bentham and Dumont may deservedly be placed at the head, have shown, by means of multiplied definitions, divisions, and disquisitions, what the nature and comparative degrees of crimes and punishments are; that punishments ought to be exactly proportioned to the magnitude of crimes; and that those punishments are the most eligible which serve the most effectually to deter and reform while they inflict the least injury on the criminal. On these and collateral topics, they reason with great sagacity and penetration, but too frequently with a degree of refinement which has no other termination than the attainment of speculative truth. As



soon as it becomes necessary to reduce their doctrines to practice, it is perceived that no such variety of punishments has been discovered as almost all their speculations presuppose; and even if it were, there is hardly a state existing, the whole wealth and wisdom of which would suffice to carry one of their theories into execution, although dedicated to that single object. The result consequently is, that the improved punishments recommended by theoretical writers would almost invariably entail a heavy additional burthen on the community, while it is exceedingly doubtful whether their effects would not be worse, both on the public and the criminal, than that for which they would be substituted. No better proof of this could be desired than that which Leopold, Joseph, Catherine, and their preceptor Beccaria, have left us. In section 28 of Beccaria's *Treatise on Crimes and Punishments*, which contains the only truly practical observations to be found in the work, he gives his opinion on the nature of punishment in the following words:—*‘ Non  
‘ è l'intenzione della pena che fa il maggior  
‘ effetto sull' animo umano, ma l'estensione di  
‘ essa: perchè la nostra sensibilità e più facil-  
‘ mente e stabilmente mossa da minime ma re-  
‘ plicate impressioni, che da un forte ma passa-*



‘ giero movimento. Non è il terribile ma pas-  
 ‘ sagiero spettacolo della morte di uno scelerato,  
 ‘ ma il lungo e stentato esempio di un’ uomo  
 ‘ privo di libertà, che divenuto bestia di servizio,  
 ‘ ricompensa colle sue fatiche quella società che  
 ‘ ha offesa, che è il freno più forte contro i  
 ‘ delitti.’ It is unaccountable, though not quite  
 singular, that a philosophical inquirer should at  
 the same moment display such excess of sym-  
 pathy on the one hand, and deficiency of it on  
 the other; for surely nothing short of the most  
 confirmed perversion of affection and under-  
 standing, could induce a man to think he per-  
 formed an act of mercy by saving the life of a  
 rational creature for the avowed purpose of de-  
 grading him to the condition of a beast. Yet  
 this is the legitimate consequence of Beccaria’s  
 reasoning as well as his expressions; and who-  
 ever examines the penal laws of Austria, Tus-  
 cany, and Russia, will perceive that in this sense  
 his royal disciples understood and endeavoured  
 to exemplify his doctrine. In the Austrian code,  
 we find that the punishment usually substituted  
 for death consists in confinement from 5 to 20  
 years, or for life, or in that dreadful form of soli-  
 tary confinement, called in the Italian version of  
 this code *carcere duro* and *carcere durissimo*,  
 according as the heinousness of the crime or

the circumstances of aggravation require one or other of these degrees of severity. In Russia, condemnation to the mines in Siberia may be decreed for any definite length of time, or for life; and in Tuscany, the edict of Leopold authorises confinement for 5, 10, 20 years, and for life: in other cases, it inflicts condemnation to the galleys for life and in chains. Imprisonment under the American law is also inflicted from 1 year to 20, and for life. Due reflection on these heavy and protracted punishments affords reasonable grounds to doubt whether it would not be an act of greater mercy even to the criminal himself, that after due time allowed for preparation he should at once be deprived of existence, rather than to have his mind and body gradually worn down and destroyed by imprisonment on board the hulks, within the walls of a prison, or in the bowels of the earth. Mr. Buxton, at page 87 of his *Prison Discipline*, mentions the case of an active farm-servant ‘almost driven out of his senses by solitary confinement;’ and in September, 1819, I witnessed a still more remarkable instance in Austria of the suffering which *real solitary confinement for life* is capable of creating. A labourer in that country was, in the year 1817, convicted by the oath of one

witness, confirmed by the strongest circumstantial evidence, of having murdered one of his neighbours. The criminal did not confess at the trial, and for want of such confession could only be condemned by the present law to perpetual solitary imprisonment. He bore it patiently two years, but at the end of that period, the weight of his present and prospective sufferings became so insupportable, that he then deliberately confessed, received sentence of death, and I saw him dragged through the streets of Vienna on the way to execution. Few people, it is believed, who sufficiently consider the nature and intensity of the punishments now mentioned, would think the adoption of them in any point of view an advisable method of mitigating the Criminal Law of England.

It may be still urged that much additional light has of late years broke in upon the whole subject of penal law, and that it has now been discovered, that without resorting either to capital punishment, or the severe secondary ones contained in the codes of which we have been speaking, crimes may be effectually repressed by mild punishments certainly and invariably inflicted. Some devoted adherents of the system of perfectibility go one step farther,

and with Sner, in the Critic, anticipate the era when they will be repressed without any punishment at all. ‘This,’ says he, ‘is a comedy, on a new plan, replete with wit and mirth, but of a most serious moral. You see it is called *The Reformed Housebreaker*, where by the mere force of humour, housebreaking is put in so ridiculous a light, that if the piece only has its proper run, I have no doubt but that bolts and bars will become useless by the end of the season.—In short, his idea is, to dramatise the penal code, and make the stage a court of ease to the Old Bailey.’ Much reasoning has been employed by very grave men respecting the possible mildness of punishments, scarcely less visionary, and far less harmless than the schemes ascribed to the author of the *Reformed Housebreaker*. There is no authority to be found either in Revelation or the aspect of the present times, for believing that provided punishments were certain, although extremely mild, would effectually prevent the commission of most sorts of offences. When it is assumed that a particular result would follow, *provided punishments were rendered certain*, recourse is had to one of the hypothetical arguments sometimes used in controversy, which frequently obstruct, but seldom facilitate

the approach to truth. But in reality, no such certainty, nor any great approximation to it can exist. The non-appearance or misconduct of witnesses on the trial, irregularities in the proceedings, and the fallible and differing judgments of judges and juries will always afford numberless chances to the guilty to escape, in addition to that which they estimate more than all the rest, the chance that they shall never be detected. Certainty of punishment is as unattainable as certainty of conviction. No table of punishments has been constructed so accurate and ample as to apply to all kinds and gradations of offences; nor is any country to be found in which the punishment prescribed by law has been invariably inflicted. In the mildest as well as severest systems of penal law, a discretionary power has always been lodged somewhere, and the real question is, to what extent, and by whom it ought to be exercised. The objections to this discretionary power are forcibly stated by Sir Samuel Romilly in his *Observations on Criminal Law*. He complains that no two judges exercise it in the same manner; and that one man may be executed for a comparatively venial offence on account of bad past conduct, while a participator in the same transgression escapes



with a more trivial punishment, by which means the public loses the benefit of example, and never knows the real crime for which the severer punishment has been inflicted. Though these objections are not without foundation, they are pressed a great deal too far. As long as human understandings differ, the administration of law and equity under different judges will differ also, whatever pains may be taken to prevent it; and the public invariably display greater penetration in discovering the real cause of distinctions of punishment than Sir Samuel Romilly has supposed. If two men are convicted of the same crime, one of whom is an old and the other a new offender, if the first is executed and the second escapes with transportation or imprisonment, the public seldom mistakes the true reason of the distinction made between them. It is one which, in the administration of every law, there ought to be an opportunity of making. If a confirmed London thief, for instance, who has long lived by stealing, but has all the while continued to elude the vigilance of justice, is at last convicted; or if a person should be convicted of passing forged notes, who is, at the same time, well known to be a forger, every principle of equity demands that a more severe punishment should be

inflicted on such hardened malefactors as these, than on those who though they have been participators with them in one particular act of delinquency, have been but recently seduced from the paths of virtue. Sir S. Romilly says, if this discretion is to be continued, it should be methodised, and that general rules should be framed for the instruction of the judges. To this there can be no objection, provided the end in view is attainable either by general rules applicable to the whole Criminal Code, or special ones adapted to each particular case. The only fear is that if the attempt were made, there would be found an insurmountable difficulty in making any kind of rules concise and intelligible. Admitting, however, that such a plan is practicable, the argument here used would in no respect be affected. All that is contended for is, that under whatever form it appears, however it may be limited, and to whomsoever it may be committed, this discretion will, and for the furtherance of substantial justice ought invariably to exist. In this country, it is in effect, though not in theory, delegated to the judges; and though it may be inexpedient to trust them with it to so great a degree as at present, it will be found neither practicable nor desirable to deprive them of it

altogether. The very responsibility which it entails is one of the best securities the country can have that the ministers of justice will be men of capacity and integrity; and the exertion of it is among the most legitimate means of securing to them that respect and deference which ought to be yielded to their office. In the edict of Tuscany, and in some other lenient codes of Criminal Law, this very discretion is reserved to the judges in express terms, to an extent which is always large, and which, under any of its modifications, would, in this country, appear alarming. In our own system of transportation, it is exercised by the Governor of New South Wales; and the exertion of it is anxiously provided for in 56 Geo. III. c. 63. which establishes the Penitentiary, from which institution beyond all others uncertainty of punishment, either as to duration or severity, ought, if possible, to have been excluded. Let capital punishment, therefore, be restricted as it may, the nature or duration of the punishment substituted in its stead, must still remain uncertain, and the only sort of certainty resulting from the change will be, that capital punishment can no longer be inflicted. Whether such an impression would tend to diminish crimes, it is not the present purpose to inquire; but those who

take it for granted that certainty of conviction and the inflexible execution of the statutory penalty afterwards, would render punishment equally effectual, though greatly less severe, proceed upon an assumption which is warranted neither by reasoning, the practice of any other country, or the present state of society in England.

To this state of society, neither in the Minutes of Evidence taken before the Committee, nor in the Report of the Committee itself, nor in any of the discussions respecting the improvement of the Criminal Law, either in or out of Parliament, has the slightest allusion hitherto been made; and yet it seems just as necessary that it should be kept in view by those who would legislate upon it securely, as for a physician to attend to the peculiar constitution and condition of the patient for whom he prescribes. By those who delight to exhibit mankind in the most forbidding aspect, it has sometimes been alleged, that however the form of vice may vary, the amount of it which prevails in any age or country still remains the same. In no sense of the words does this appear to be true; and as far as concerns offences cognizable by law, it is palpably false. In some parts of the world, unless society has been disordered by

some extraordinary cause, the frequent commission of crimes amounts almost to an impossibility. Take, for example, the kingdoms of Denmark or Sweden, or the inland states of Germany, where there are few large towns or manufactories, where population is thin, and the inhabitants are bound down to good and orderly behaviour by the strongest of all obligations, those of attachment to their native soil, and love and respect for the relations and acquaintance in the midst of whom they have passed their lives. In such countries, except to provide for a few heinous crimes which now and then unexpectedly burst forth, little restraint of law is necessary. In England, on the contrary, every one of these circumstances is reversed, and it would be difficult to point out another part of the world where the inducements to criminality are so many, and the restraints upon it are so few, except those which the iron hand of law imposes. The very wealth with which the country abounds, becomes a plague instead of a blessing, and a temptation to illegal acts which besets its people in almost every place and under every form. Its towns, too, from their size and number, tend powerfully to swell the list of offences, by screening abandoned characters from observation, and furnishing them



with opportunity and suitable companions for the execution of their unhallowed enterprises. In addition to these fertile sources of guilt, the fluctuations of trade are always, in some district or occupation, throwing men women and children out of employment; and it would be strange if idleness, bad habits, and a want of superintending care, did not involve some of them in profligacy and delinquency. Last of all, there is that relaxation of the bonds of social and domestic intercourse, which dense population and commercial habits naturally produce, but which was never perhaps carried to such a length as it is now in England. People meet and part, become familiar or estranged, and contract and dissolve the various relations in life with a facility and thoughtlessness which in former days was neither known nor imagined. When choice or necessity separates those who have been accustomed to live or deal together, the readiness with which new connections may be formed, among whom time may be spent in tolerable comfort if not with happiness, makes those who associate together less minute in their inquiries about the dispositions, characters, and history of one another. All this has a pernicious effect upon society at large, but especially upon clerks, workmen, labourers, apprentices,

and servants. If they faithfully and adequately perform the services required of them in their several capacities, further inquiry is seldom made about them, and they experience none of those words and acts of kindness which can alone give birth to similar sentiments in return. Interest may command the service of the person, but interchange of feeling alone can attach the heart. As long as they continue to do their duty, they are permitted in every other respect to live entirely as they list; but whenever it ceases to be performed, either from illness, accident, or misconduct, they are abruptly if not unfeelingly discharged. The consequence is, that the respect and attachment which servants and dependants used to show to their masters and superiors, and the care and support which on the other hand they received from them during sickness and old age, has now, to the manifest disadvantage of both parties, almost entirely disappeared. The community also sustains no inconsiderable injury; for it is difficult to say whether the uncontrouled command which they have of their spare time and money during the days of prosperity, or the destitute condition to which they are reduced on a change of fortune, contributes most largely to the multiplication of crimes.

That such offences as highway robbery and murder are not so frequent among us as formerly, is a source of just congratulation. Whether the temper of the times be more repugnant to those atrocities or not, it is certain that the increase of population, the state of the roads, inclosure of commons, and improvement of the country, render the perpetration of them with impunity more difficult. But it is no less certain also that other offences, and those of a character which deeply affect the good order of society and security of property, have notoriously and exceedingly augmented. This fact, which is incontestibly proved by the returns which have been laid before the House of Commons, renders it impossible to join in those encomiums on the morality and religion of the nation, which have sometimes been passed upon it. It would argue unpardonable perverseness of temper, to evince any desire to degrade the character of the nation, either in its own estimation or that of others; but there is no reason why truth should be sacrificed at the altar of popular prejudice. Of all enemies to the real improvement of a state, none are more dangerous than those who encourage the conceit of their countrymen by prompting them to arrogate a species of superiority which they do not possess.

That the higher, and a considerable proportion of the lower orders, discharge every relative duty of life with a propriety nowhere exceeded, there is good ground to believe; but that a considerable proportion of the common sort are as profligate and ungovernable as their fellow citizens are exemplary, the evidence and documents printed by the Committee on the Criminal Laws of themselves furnish irrefragable evidence. There is reason to think that the very excellence of our constitution may render it necessary to make our penal laws more severe than in those countries where freedom is but imperfectly established. Where every one knows the exact limits of his rights and privileges, and is jealous to an extreme degree of their preservation, no person dares to arrest or controul his actions, however obviously they will end in legal guilt, until he has done some deed which is positively criminal. Magistrates and conservators of the peace are thus frequently obliged to stand by and witness proceedings which they are morally certain will terminate in violence or bloodshed, and which would have been checked at the outset in those countries, where the desirableness of the end makes them less scrupulous about the legality of the means by which it is attained. As it seldom happens

that any signal good can be secured without some corresponding evil, it is to be feared that an addition to the severity of our penal code is part of the price which the people of England must be content to pay for the liberty of the subject.

It may now be proper to inquire whether, in the condition in which this country is described to be, there is any probability that transportation and imprisonment will ever entirely supersede the use of capital punishment.

Transportation now takes place only to New South Wales, and its duration may be either for the limited period of 7, 10, or 14 years, or for life. With whatever intention transportation was first resorted to by this country, there is reason to suspect that it is now continued, not because it answers the salutary ends which all punishment ought to have in view, but because it is the easiest method of getting rid of hordes of convicts whom the law does not know how otherwise to dispose of. Transportation for years is shown by the concurrent testimony of those gentlemen, both in this country and in New South Wales, who have the best means of judging, neither to deter nor reform. The convict goes from the bar, after hearing sentence pronounced, with an address of 'Thank



you, my Lord' to the judge; is looked upon by himself and his friends as setting out on his travels; in general wears out his time unreclaimed; comes back with his appetite for crimes sharpened by the abstinence to which he has submitted, and is usually soon remanded to his place of banishment, a more corrupt and corrupting member of society than ever. It ought not to be concealed however, as a fact which is mentioned by Mr. Riley in his evidence before the Gaol Committee, that a large proportion of those who are sentenced to New South Wales for a limited period never afterwards quit the colony. But as it appears by the tables printed by the Committee on Criminal Laws, that only about a fifteenth part of the whole number of transported felons are at present sent away for life, a considerable number of them must, naturally, from time to time find their way back to England, and some of those who have good means of information on the subject affirm this to be the case. To preclude this return in all cases whatever, and never to inflict transportation but when it is made perpetual, is so strongly recommended by the evidence given before the Committee on Gaols and the Committee on Criminal Laws, that little doubt can remain that the sooner an end is put to trans-

portation for years, it will, both for the country, the colony, and the convicts, be the better. That this nugatory species of punishment has for a good while past materially contributed to foment wickedness, is proved almost to demonstration; but no ray of hope appears that under any modification it can materially tend to assuage it. The shock of perpetual separation from every thing with which a criminal has become familiar, is calculated to produce an effect extremely beneficial; and if the convicts are selected from those brought up to country labour, or the most necessary mechanical trades, while their numbers are confined within proper limits; transportation for life may remain a merciful and efficient mode of punishment. If the population is scattered, the individuals who compose it, though consisting principally of convicts, have many motives to abstain from crimes and few to commit them; and accordingly the evidence laid before the Gaol Committee, shows that the experiment succeeded so well when the colony of New South Wales was in its infancy and only a small number of convicts was transported, that the original settlers, who now receive the name of *old hands*, have become orderly and industrious members of society. The instant any settlement becomes populous

this effect entirely ceases. The dread of removal to it is destroyed, the chances of escape are multiplied, and the prospect of reformation from the scarcity or remoteness of bad companions becomes more distant. This must inevitably happen, let the convicts be of what description and character they may; but if they consist of such a deluge of helpless useless outcasts as have lately been poured upon the coasts of New South Wales, a reference to the evidence given before the Committee and to the information of every respectable person connected with the colony, will sufficiently evince how deplorable in every point of view the prospects of that improveable settlement must become. By injudicious management the mother country wantonly throws away the advantages which such a colony is naturally calculated to yield. Under prudent restrictions with respect to the number and qualifications of convicts, transportation to New South Wales might continue to prove a salutary punishment, so long as there is any productive fresh land to occupy. Supposing the bulk of the settlers to be persons of orderly behaviour, the convicts to be well selected, and to bear a low proportion to the total population, they would adopt the habits of others instead of communicating their own, and

their removal from home might not only be the means of their own reformation, but of advancing the prosperity of the community. In this case the great difficulty would be, to dispose of them in the colony in such a manner as to make transportation still dreaded at home as a punishment; for unless it acted as a punishment, and by that means deterred others from committing the offences for which the convicts had been transported, it could in no degree relieve the parent state, whose interests are now chiefly under consideration. Transportation can, under no circumstances, be longer regarded as a punishment than while the spot to which convicts are carried, is dreaded by them as destitute of society and comfort. At what precise period in the progress of a settlement, or under what circumstances, this takes place, must depend upon the peculiarities of each particular case, reference being had to its climate, soil, situation, and accession of numbers. Though removal to New South Wales might be a very proper punishment for half a century to come to some classes of convicts, in the minds of most of those who are sent thither it has already ceased to create any apprehension. And yet upon what principle is it still continued? It is stated by Mr. Bennett, in his

Letter to Lord Bathurst, that the number of convicts which left England for that colony during the year ending 7th March, 1820, amounted to 1016; and if all the alterations of the penal laws proposed in 1821 by Sir James Macintosh had passed into laws, there can be hardly any question they would soon have been three or four times as numerous. And to what description of persons do these criminals belong that are sent? It has been observed, that the only convicts likely to become orderly industrious members of society, in a country so circumstanced as New South Wales, are those who have been bred to country labour and the handicrafts connected with it. But these are not the classes to which any considerable proportion of transported convicts belong. Those who form the bulk of the cargoes of convict ships are the refuse of trading and manufacturing towns, and just as ill-assorted a commodity for the infant agricultural colony of New South Wales, as can well be thought of. No settler will, on their arrival, voluntarily receive them into his service, and nothing more is accomplished by their banishment than this—they are got rid of for a time by removal to the most distant quarter of the world at an extremely burdensome expense, and



continue as indigent, wretched, costly, and corrupt at Port Jackson and on the Coal river, as they could have been in any corner of the country from which they have been transported. Such is the result of a mode of punishment which has been extolled as honourable to the humanity and intelligence of the present times, in spite of the unequivocal and accumulating proofs regularly received of its having proved abortive. When it is considered what sort of persons are alone fit to be sent out as convicts; the limited numbers that can be sent to any settlement so as to continue it an object of terror and means of reform; and the difficulty of finding and expense of establishing fresh stations, when the old ones require to be abandoned, it is clear that no effectual reliance can be placed upon transportation as a general and permanent mode of preventing crimes either by this or any other country.

Imprisonment however, rather than transportation, seems now to be regarded as the grand specific for the cure and prevention of every species of crime. Like many other schemes upon new or improved principles, to which the attention of the public is solicited, it is exceedingly expensive. Many ingenious persons

descant upon solitary confinement, classification of prisoners, the benefits of neatness, cleanliness, roomy cells, yards, and airing grounds, as if any plan for the improvement of prisons or penitentiaries could be executed without money, or as if that money could be derived from any other source than the pockets of the people. It is however very certain, that prisoners must be secured and crimes punished, and yet that the community cannot afford to devote more than a certain proportion of its time or substance to that object. In England, whenever an appeal is made to the compassion of the public, it scarcely knows how to set bounds to its generosity. For some time past all sorts of persons who, from misfortune or misconduct, have become in any wise destitute or distressed; from the thoughtless or profligate debtor who procures his discharge under Lord Redesdale's act, down to the London charity children, whom it was lately proposed to convey in caravans to the wilds of Dartmoor, are looked upon with an eye of greater favour than in any other country. Dramatic effect is so well understood, that whoever proposes a plan which can be recommended by an affecting speech or statement, is sure to

draw over at once to his side no inconsiderable portion of the community. Notable women, very young men, clerks in counting-houses and public offices, strenuous political reformers, a great part of the daily press, and the enthusiastic admirers of liberality and humanity are all zealous in its favour, besides a larger or smaller part of the community who on better grounds think proper to give it their support. As these sorts of adherents are usually the most indefatigable and vehement in conversation and discussion, the expression of their opinion is frequently mistaken for the voice of the country at large, and upon occasions too when they are very far from forming the majority either in numbers or consideration.

It will not be supposed that the language now used implies an indiscriminate aversion to measures which aim at alleviating the sufferings or ameliorating the condition of our fellow creatures. To all such as upon deliberate investigation appear to answer this end, of whatever nature they may be, and from whomsoever they may proceed, I cordially wish success. The reasoning employed is only intended to show that the sensibility which some of them have at first sight excited, has evidently

overstepped the limits of propriety; and that the accommodation which has in various instances been made for prisoners and convicts, much exceeds that which it is expedient to grant. The expenditure on this account has in various counties been enormous, and the rates imposed to defray it have been so oppressive, as almost to reduce industrious persons of small property to the condition of those very individuals for whose benefit such rates were levied. What additional charges an extraordinary mitigation of our penal laws and total abolition of capital punishment would entail upon the country, it would be difficult to specify. They would certainly prove extremely burthensome, and those who are intrusted with the administration of public affairs ought to estimate them carefully before they are any further sanctioned. The first cost of the buildings alone would make no small figure even in a country whose legislative assemblies are so much accustomed to count by millions. Of this any one may be satisfied on taking a survey of the Penitentiary at Milbank. From the moment it heaves in sight, it might be mistaken, from its vast extent and marshy situation, for one of the garrison towns which have so long

given dignity and interest to the flats of Holland; and on a nearer approach, the growing grandeur of its embankments, walls, towers and circumvallations, prove that the distant prospect did not belie the reality. The sum already expended on the building amounts, it is believed, to no less than £783,000, and it is not yet finished. As it will, when completed, contain no more than 600 men and 400 women, it is worth considering how many of such establishments would be required to receive all the convicts of the kingdom, in case confinement in penitentiaries should hereafter be made the principal mode of punishment. In 1818 there were 2052 persons condemned to transportation for the different periods of 7, 10, 14 years, and for life; and 1254 convicted capitally, of whom only 97 were executed. The remaining 1157, must consequently have had the capital punishment commuted for transportation, so that the whole number of persons transported or condemned to transportation in a single year must have been upwards of 3000. Supposing 1500 of these, under a mitigated code of Criminal Law, to be transported, and the other 1500 to be confined in penitentiaries for an average of three years each, their number at the end of that time would have swelled



to 4500, and continue to stand at that amount unless the annual number of convicts diminished. This would be the case, even supposing prosecutions not to be more frequent than at present; but it must have been observed, that an immense increase in prosecutions is one of the effects most confidently anticipated from the abolition of capital punishments by those who object to them. It has never been stated to what degree prosecutions would thus increase; but, from the reasoning and expressions employed, it may be gathered that they would at least be tripled or quadrupled. If they were only doubled, the constant total number of convicts to be disposed of would amount to 9000; which would render nine Cities of Refuge, each as large as that at Milbank, necessary for their reception. These must be built and repaired, as well as the costly establishment attached to each supported. An attempt has been made to show, from the manner in which the gaols have been erected at Ilchester and Shepton Mallet, with how much thriftiness convicts may be made to build their own cells, and that the joint produce of their labour in a house of confinement will nearly defray the whole charge of the establishment. Taking the most favourable instance which it is

possible to produce, and supposing the price put upon the articles manufactured by the prisoners to be just, which is however always higher than it would fetch in open market, there is little doubt that on a fair settlement of accounts between the governors and any of these establishments, the establishment will invariably be found a debtor to a very large amount. This has invariably proved to be the case in every country in which they have been tried. In the Report made in 1817 by Commissioners appointed by the State of Massachusetts, to inquire into the mode of governing the Penitentiary of Pennsylvania, and into the improvements which might be practicable in the management of their own state prison, the Commissioners remark, ‘ *the expense* is found to  
‘ be every where one of the most popular objec-  
‘ tions to the penitentiary system. This ob-  
‘ jection is perhaps founded in the disappoint-  
‘ ment of a vague expectation, that such an  
‘ institution would support itself by the profit  
‘ on the labour of the convicts, rather than  
‘ upon any general view of the loss or actual  
‘ charge to the commonwealth, compared with  
‘ that which would attend or grow out of the  
‘ plan of summary corporal punishments.’ The same Commissioners extract from the Report

of another set of Commissioners the following passage respecting the state of the Penitentiary at New York. ‘ It has for some time past not ‘ only failed of effecting the great object chiefly ‘ in view, but has subjected the treasury to a ‘ series of disbursements too oppressive to be ‘ continued, if they can in any way be prevented.’ It is not possible that the expense of such prisons or penitentiaries should be otherwise than heavy. In the Report made in 1821, to the House of Commons, by the Commissioners appointed to inquire into the State of the Gaol at Ilchester, they observe, that different sorts of manufacture had been carried so far as to injure the discipline of the prison. The very nature of such an institution therefore must make it burdensome. If a gaol or penitentiary is a flourishing manufactory, it must be a bad place of punishment; if it is a good place of punishment it must, on the other hand, be an unprofitable manufactory; and if it is an unprofitable manufactory it must be expensive. The charge of extraordinary expensiveness which may now be made to many gaols, houses of correction and the Penitentiary, applies equally to transportation. The freight of each convict from England to New South Wales amounts to about £20, and each

on an average costs about £20 a year afterwards. The increased expenditure of the colony has kept pace with the increase of transported convicts, and is alleged, in 1820, to have come to little less than £300,000. It is difficult to determine, therefore, whether confinement or transportation be the more costly; and the total charge incurred by the one which happens to be most in vogue must increase precisely as that of the other diminishes. Thus much has been said on the heavy tax occasioned by the grievous numbers of felons which are accumulating abroad and at home, because, in a financial point of view, the subject will eventually be found entitled to more consideration than it has hitherto received. It can make no difference in the reasoning whether the tax paid is at once imposed upon the whole country, or a part of it only is imposed upon the country, and the remainder levied from each county separately. The tax presses ultimately with the same weight upon the community, and becomes even more objectionable from the imperceptible manner in which it is raised and increased. It may be said, that though all which has now been urged against the costliness of the punishments of transportation and imprisonment were true, it would not amount to a

conclusive argument against them. It certainly would not, nor has it been advanced with any such intention. All that is contended for is, that before capital punishment is abolished, or any great stride made towards it, the unlimited drain upon the public which the punishments to be substituted for it would certainly occasion, is a strong reason for exacting the most convincing proof, that they would effectually answer those purposes of reformation and terror which they are said to accomplish. This has not yet been produced, nor is it possible to do it.

One would be loth to hurt the feelings or dash the hopes of those who are engaged in the exalted task of moral reformation; but neither the evidence given before the Committee on the Criminal Law and Committee on Gaols, nor any facts which have hitherto been discovered, hold out any expectation that a general or thorough conviction of criminals can by any process be effected. There is a degree of credulity shown on this subject by most of the advocates for extreme mitigation of punishment which is perfectly amazing. The good sense and caution which they could not fail to display on other occasions seem here totally to



forsake them, and they receive with avidity any reports of repentance and amendment with which they are presented, instead of examining them with the discrimination of sound practical statesmen, anxious to found projected improvements only on the basis of facts which will stand the test of the closest inquiry. Yet in whatever dress these Reports appear, or in whatever manner the extracts from them are selected, some circumstances always peep out which place in the strongest light the difficulty of effecting permanent reformation. No opportunity seems so favourable for the exemplification of it, one should think, as in those cases where no legal steps have been taken against the offending parties : where their character to all appearance remains unsullied ; and where all the notice which has been taken of their misbehaviour consists in the good advice they receive at the hands of those whom they have injured. Gratitude for forgiveness, escape from shame, and relief from suffering, ought surely to conspire to effect a salutary change in the mind, if any thing short of forcible remedies could have that effect. Yet even under these circumstances, the facts contained in the Reports of the Committees on Criminal Laws and on Gaols offer little ground to expect it. Five

cases of this sort are mentioned at pages 92, 97, 106, 116, and 118, of the Report of the Committee on Criminal Laws, and yet three out of the five offenders, after all the kindness shown to them, are admitted to have turned out badly. This is viewing these cases most favourably ; for it happened with them, as it does with many others of similar nature, that the continued criminality of those who turned out ill is placed beyond all doubt, while the reformation of those who turned out well rests on information and belief only.

If reformation was so precarious among those in whom it might with so much reason be expected, the case of hardened or convicted criminals, whether young or old, is still more hopeless. The following evidence is given by Mr. Henry Hoare, jun. who has taken a principal share in the management of the permanent Refuge in London for boys, at page 149 of the Report of the Committee on Gaols :

‘ The Committee would be glad to have a  
‘ general account of the proportion you think  
‘ have turned out well, and those who have  
‘ not turned out well, or who have been dis-  
‘ missed for misconduct ? ’ ‘ From May, 1815,  
‘ which was the commencement of the esta-  
‘ blishment on the present premises, to Christ-

‘mas, 1816, 187 under 20 years of age have  
‘been admitted. Of these, 56 now remain in  
‘the establishment, and are going on exceed-  
‘ingly well; 54 have been reformed and dis-  
‘charged, and we have the most satisfactory  
‘account of their conduct; the number of those  
‘who have returned to their evil practices is  
‘very high, being 46; but the majority of those  
‘cases were admitted before we had the sys-  
‘tem in proper order.’

Of the 31 unaccounted for, he says, ‘the  
‘society feared that 18 had returned to crime,  
‘and 13 they knew nothing at all about. They  
‘wish to keep the boys two years in the esta-  
‘blishment before they are considered as tho-  
‘roughly reformed.’ Taking this statement of  
Mr. Hoare in the most favourable view, it ap-  
pears that out of 131 boys, which was the total  
number discharged, 46 are known to have  
returned to crime, and there is reason to believe  
that 31 more have been little if at all reformed.

Mr. Shelton, at page 27 of the Report of the  
Committee on Criminal Laws, says, ‘persons  
‘who put off bad money uniformly come to the  
‘bar of the Old Bailey, till they are disposed  
‘of one way or other: if they be acquitted in  
‘one session they come the next, and so till  
‘they are convicted: it is almost to a certainty

‘ that they will come again.’ Mr. J. A. Newman, on being asked if he could guess what proportion professed rogues and young offenders bear to the whole number of convicts, answers, ‘ No, not correctly, but I should think ‘ about one in four, who cannot get their living ‘ in any other way. Of capital convictions?— ‘ Of persons committed generally.’ Mr. Ruell supposes, that from one third to one half may be persons of that description. Mr. Shelton is also asked, ‘ A very considerable number of ‘ those persons who are tried at the Old Bailey, ‘ one may say, are malefactors by profession, ‘ that is, persons engaged habitually in crimes? ‘ Yes, they are.—A great number of persons ‘ are more than once or twice brought to the ‘ bar? Oh dear, some are brought many times.’ Mr. Ruell on being afterwards asked—‘ Have ‘ you any hope of reclaiming those brought up ‘ in ignorance sooner than others?’ he makes the following reply:—

‘ In some cases good has been and may still ‘ be done; but my experience compels me to ‘ say, that I am not very sanguine as to reclaim- ‘ ing those young offenders, who have, from ‘ their very infancy, been inured to crime; we ‘ have generally more trouble and less success ‘ with such than more old offenders. The rea-

‘ son I conceive to be, because they have been  
‘ brought up in entire ignorance of all moral  
‘ and religious principles ; and their associating  
‘ together only tends to harden them in crime.  
‘ There is a depth of depravity and moral in-  
‘ sensibility among them truly appalling, and  
‘ which would be hardly credited without  
‘ ocular demonstration. While no efforts should  
‘ be spared to recal such instances of moral  
‘ degradation, I feel convinced in my own  
‘ mind, from what I have seen and heard, *that*  
‘ *measures to remove their ignorance, and prevent*  
‘ *the seduction of others, will confer a much*  
‘ *greater benefit upon the public than the best*  
‘ *means of recovering the lost.*’

Mr. John Teague, Keeper of Giltspur-street Compter, at page 271 of the Report of the Committee on Gaols, is asked—

‘ Have you any means of observing whether  
‘ any beneficial result has followed from keep-  
‘ ing the boys so employed ?—‘ I have not had  
‘ an opportunity of observing, but I have no  
‘ doubt they will be better for being employed;  
‘ there is no doubt about it.’—‘ Have you any  
‘ means of knowing how any of them have be-  
‘ haved after leaving the prison ?’ ‘ I have  
‘ heard of many of them being in custody  
‘ again.’ ‘ Committed to your gaol ?’ ‘ No, to



‘ other gaols; but as I attend the sessions, I  
‘ frequently see them, and, although in another  
‘ name, I know them.’

With respect to the inefficacy of the discipline to which criminals are subjected on board the hulks, Mr. Grey Bennett is surely an unexceptionable witness. In his Letter to Lord Sidmouth on the Transportation Laws, published in 1819, he says when speaking of the management of the prisoners on board the Laurel convict ship, ‘ that one of the convicts  
‘ told him that little was effected in the nature  
‘ of real reformation; the prisoners found it to  
‘ be their interest to appear satisfied, and to  
‘ make no complaints, but those who imagined  
‘ that any moral amendment would be effected,  
‘ deceived themselves to the greatest degree.’ Mr. Bennett also says at page 48 of the same pamphlet, without being conscious that the remarks he has made upon the chaplains of the hulks might perhaps with nearly as much propriety be applied to himself:—‘ I read with  
‘ surprise the annual report presented to parliament, and the account given by the respective  
‘ chaplains of each ship. These statements,  
‘ though the authors are very respectable and  
‘ praiseworthy persons, are not to be admitted  
‘ without great caution. These gentlemen are

‘ the heroes of their own works, and without  
‘ meaning offence to those whose exertions I  
‘ highly value, they are too apt to be their own  
‘ panegyrists. Notwithstanding these authori-  
‘ ties, I am incredulous as to the miracles of  
‘ reformation, which are stated to be annually  
‘ worked on board the different hulks on all  
‘ varieties of persons and under all varieties of  
‘ management.’

There is no disposition to deny, that prisons and houses of correction may produce more reformation than the hulks. Those who take the trouble to turn to pages 304, 322, 329, 332, 353, 371, 380, 384, and 387, of the Report of the Committee on Gaols, will find instances of the amendment which may be there accomplished. They are the only ones which occur in any part of the volumes lately printed under the authority of parliament, and, like many other facts which have been quoted for the same purpose, are not of so precise and satisfactory a nature as to permit entire reliance to be placed upon them. The testimony of Mr. Cunningham, one of the officers of Gloucester gaol, may be quoted on the opposite side, which is found at page 390 of the same volume, and unfortunately more than outweighs any evidence that has yet been put into the scale against it. Mr. Cun-

ningham is asked—‘Have you been in the habit  
‘ of late years of granting as many certificates  
‘ of good conduct in the prison as you used to  
‘ do?’ ‘We have not.’—‘On what account?’  
‘We could not ascertain the reformation we  
‘ had worked upon them, in consequence of the  
‘ crowded state of the prison, and their working  
‘ in society.’

These short answers communicate one of the most authentic and decisive results which has yet been laid before the public on the effect of imprisonment as a punishment. It is generally understood, that as Gloucester gaol was among the first, it has continued among the best regulated places of confinement in the kingdom, and in which consequently we might expect to see one of the fairest proofs of the effect of prison discipline. Yet after a trial of 17 or 18 years, with all the help that regulation and classification afford, it is found that it is relapsing into its former state, and without any certainty of the prisoners now committed to it, being materially better than they were before, it is certain that they have become a great deal more numerous. The same thing is believed to have happened in every prison in England from which returns have been received, and where the same system is pursued. The number of

commitments has invariably increased, especially within the last few years, in the course of which time the new system of prison discipline has been in most active operation. Some circumstances to be afterwards mentioned respecting the *Maison de Force* at Ghent, remarkably coincide with what has taken place in the different gaols in England.

It has been alleged, however, that penitentiaries possess virtues both to deter and reclaim, which no other places of punishment have ever yet possessed. It may be so. That the treatment which prisoners and convicts now experience in prisons, bridewells, houses of correction, and penitentiaries, is decidedly superior to what it was under the old system, and may be made an excellent punishment for minor criminal offences, is beyond all question, and it is to be hoped is susceptible of still further degrees of improvement. More may be expected from the treadmill, than from any other species of discipline hitherto used, and other kinds of labour may be discovered still more constant, dull, and disagreeable. But do not let any judgment be pronounced upon their merits until they have been fairly tried. No stress ought to be laid either upon the observations of the gaoler, the

expressions of the criminals, or apparent abhorrence of them prevalent throughout the country. The permanent diminution of convicts alone can be received as decisive evidence on the question. While it is willingly admitted that penitentiaries may be a proper punishment for minor offences, there is no disposition to deny that they may have effectually reformed many who have been guilty of delinquencies of a deeper dye. It is only said that if the penitentiary is expected to purify most of those whom it receives within its walls, or eventually to supersede the necessity of capital punishment altogether, no good reason has hitherto appeared to justify any such expectation. As the best proof of their general inefficacy, prisoners have always increased in them as well as in prisons, under the best management to which they have been subjected. In the statistical view of the operation of the penal code of Pennsylvania, published in 1817 by the Philadelphia society for alleviating the miseries of public prisons, it appears that ‘the number of  
‘untried prisoners returned on the calendars  
‘at the different sessions of the mayor’s court  
‘of the city, and quarter session of the county  
‘of Philadelphia, was :—In the year 1813, 516 ;  
‘1814, 538 ; 1815, 829 ; 1816, 1058.’ This



increase so far exceeds what can be accounted for by the growth of population in so short a space, that imprisonment there cannot have generally been accompanied with the desired effects. Nor is there much prospect that it will in any similar institution. The very uncertainty, which must always exist, of a supply of gentlemen of sufficient rank and capacity, willing to devote their time to its superintendence, presents, at the very outset, a serious difficulty. While an institution possesses the charm of novelty, and the zeal of its founders and promoters continues undiminished, it is watched and cherished with a degree of solicitude under which it cannot fail to prosper. But sooner or later the assiduity of their attention relaxes, and there seems ground to believe that penitentiaries or prisons must sustain greater injury from such than in many other establishments of a somewhat similar nature. In charities, refuges, or houses of industry, neglect or mismanagement of their visitors or directors, seldom go farther than to circumscribe the sphere of their utility; whereas, if the same thing occurred in a penitentiary, set apart for the punishment of great crimes, it would fail to effect its purpose altogether. It is only on the supposition of penitentiaries

being kept in a state of admirable arrangement that they have ever been alleged to be an adequate substitute for capital punishment at all. The extremes of severity or lenity are equally hostile to reformation; and when it is considered how much skill is requisite, not only to pitch upon this medium at first, but to adhere to it afterwards, there is no great chance that the first or any succeeding list of trustees or managers will be able to attain it. Without the assistance of such a class of persons the prospect seems still more hopeless. The best general rules which can be framed for the guidance of a hired governor and his subordinate officers will not ensure the invariable performance of their duty, or that nice discrimination in the treatment of prisoners on which their reformation so mainly depends. As it is to outward appearances that the attention of strangers is principally directed, whatever has any connection with them will be among the last things to suffer, especially if the expense be borne by the public. The pentagons may be kept quite clean, the routine of the house may go on without any interruption, and the male and female prisoners may bow and curtsy in their cells to passing visitors as becomingly as ever, although the regenerating spirit of the place has long since fled.

Let us now turn from the difficulty of the management requisite to work reformation, to the subjects upon whom, in this country, it has to be wrought. Many of them have grown grey in iniquity, and others have been from 10 to 20 times in prison by the time they are 17 years of age. The general, or frequent real reformation of such malefactors, and especially of those who infest large towns, as forgers, utterers of forged instruments, housebreakers, thieves, and pickpockets, of whom so large a portion of the whole catalogue of convicts consists, would be one of the most extraordinary moral phenomena the world has ever seen. They are not fit for country labour in New South Wales, nor have they been enured to the sedentary occupations which can be followed in a penitentiary. Instead of being regarded as rational creatures, misled by strong temptation, or hurried by passion into acts of criminality, and of whose amendment any just hopes can be entertained, they come at last, from the complete destruction of every moral principle and feeling, to be distinguished from the other sorts of vermin which render life unhappy, by little else than their superior powers of doing mischief. That they should quickly accommodate themselves to the life of a peni-

tentiary, and often assume an air of contrition and repentance, is extremely natural. It is their interest to do so, because it may probably shorten the period of their imprisonment, and, at the worst, makes it more tolerable while it lasts. Mr. Buxton, at page 87 of his *Prison Discipline*, says, that while he was in the prison he was then inspecting, a woman earnestly solicited a wheel, saying, ‘employment would ease her mind, and help her to while away the time.’ Temporary amendment is not sufficient proof of a lasting change either in principles or conduct. It is easy to tell when the cure of bodily diseases is perfected, but in those of a moral kind this is almost impracticable. Disimulation is so prominent a characteristic of those who have once become abandoned, that until it is ascertained how they avoid or resist temptation when left at their own disposal, no conclusion can be safely drawn respecting them.

Those who have witnessed the labours of Mrs. Fry, and her assistants, in Newgate, and the gratitude and respect which the disinterestedness and kindness of their conduct draws from the unpromising objects on whom they are bestowed, must be impenetrable to the best feelings of our nature if they would not gladly believe in all the success which is said to attend

them. But it will not be found to justify the glowing descriptions of those eulogists and admirers by whom the superintendants and supporters of works of charity are peculiarly apt to be surrounded. It is to be hoped it will be regarded as a token of respect for their character and a desire to co-operate in their objects, rather than a proof of concealed hostility to remark, that if the ladies' committee is to be of great or permanent benefit in Newgate, that prison must not continue as it now is, a place of show for multitudes of gentlemen and ladies to assemble twice a week to indulge their curiosity or sensibility, by witnessing the influence which Mrs. Fry's reading and exhortations produce upon her audience. The tears which prisoners shed are soon dried up, and the resolutions of amendment they may form, are often of very short continuance. Let any one linger a little behind on one of these occasions, and watch the conduct of those who are confined in any of the rooms through which Mrs. Fry and the visitors have passed, and the levity of conduct displayed by the greater part of them when removed from observation, will be found to display so striking a contrast to their demureness while under inspection, that it is impossible they should have undergone that thorough change of disposition



which almost the whole of the strangers present go home with the belief of having been effected. If instead of allowing free admittance to whole committees, only one or two persons had that permission, there would be more good done, with less ostentation ; for uniformity, quietness, and that vigilance which accompanies a determination not to be imposed upon, are essentially necessary to the success of every measure which is attempted for the benefit of criminals. As long, however, as the ladies committee do no harm, and merely further the ends which it is the object of criminal procedure to produce, whatever reformation they accomplish is so much good which would not otherwise have been gained ; and if only one prisoner in a hundred is through their means rescued from vice, their labours of love will not go unrewarded. But if instead of pursuing this unambitious course, to which it would best suit their sex and circumstances to confine themselves, they should lay hold of any opportunities which offer, of discoursing on the general principles of penal law, and of informing the visitors of Newgate of the extraordinary mitigation of punishment which their experience proves it to be possible to introduce into our code, the case becomes completely altered. Instead of grate-

fully acknowledging their exertions, it becomes necessary to examine their pretensions; and when that has been fully and fairly done, it will be found that neither the length of time during which prisoners are under their care, nor the conduct either of that portion of them who have been set at liberty or transferred to other places of confinement, as yet entitle them to draw any positive conclusions on the subject.

There is no place either in this or any other country, where the life and history of criminals after supposed reformation can be sufficiently substantiated. Two or three years, which is the utmost length of time to which examination has been carried into the conduct of convicts after their discharge from prison, is too limited a period of probation. Nothing short of the fullest evidence of the good behaviour of a long list of persons who have been reformed in prisons or penitentiaries can demonstrate their universal efficacy as a punishment. To afford this, it is not only requisite that names and dates should be given, but that reformed convicts should also be enjoined, upon their discharge, to write once or twice a year to the directors or trustees of the place where they have been confined, specifying their occupation and place of abode, or to afford for a considerable number of years,

some other clue by which inquiry might be made into their character and conduct. No steps have any where been taken to obtain this sort of satisfaction ; and even though they had been so in the Penitentiary at Milbank, as it was opened only in 1816, it cannot afford it, until it has existed four or five times as long as it has yet done. In justice to the governor of this prison, and those who are acting under him, it is proper to mention, that they seem to be as zealous and competent as any that could have been selected to fill their respective situations. Still the place does not answer the ideas formed of such an institution ; and besides the general objections which have been made to all houses of confinement whatever, there are one or two which apply to the Penitentiary at Milbank with more than ordinary force. The confinement can, in no instance, be properly called solitary, unless when it is imposed for gross misbehaviour after admission ; nor does it so nearly approach it as it ought to do. A large proportion of the prisoners are found labouring, two and three together, and all of them must, to a certain degree, be relieved or amused by the visitors who pass and repass their cells. This evil has not yet proceeded so far in the penitentiary as in Newgate, where as much harm

must be done to the prisoners on the two public days as can be counteracted during the rest of the week. The last and greatest fault to be found with the Penitentiary is that it is too comfortable. The time, indeed, has gone by when it was the ambition of the governors to have a bed-chamber and parlour for each of its inmates ; but even now, it by no means presents that air of austerity which a house of penance ought to wear. Provided health and cleanliness are consulted, prisoners ought studiously to be subjected to every deprivation in respect to lodging, food, and clothing, which may increase their unwillingness to submit again to such treatment. But so far is this from being yet the case in gaols, that it would probably be found upon inquiry, that one third of the labouring population are not so well provided with the necessaries of life as the criminals who are sent there for punishment. If there were fifty penitentiaries like that at Milbank, planted up and down the land, there can be no doubt that when their merits came to be known, there would be a sufficient number of candidates to fill them. Should this be the case, one of the best and simplest safeguards to virtuous conduct is removed ; for there is no rule of more universal application than this, that

in all sorts of prisons their inmates should fare worse than almost any individuals who earn their bread by their own unassisted industry.

The observations hitherto made on the most approved method of treating convicts in prisons and penitentiaries have been confined to *reformation* only. A still more important and indeed the only proper object of punishment is *prevention*, which the confinement now recommended has very little tendency to produce. The mild treatment which criminals experience, the shortness of the period now thought sufficient to effect a cure, the absence of unsuitable company, which follows from the length to which classification is carried, the very relief which moderate and constant out-door or indoor labour affords to the mind, the exertions made to provide situations for prisoners after their discharge, and the expeditious and effectual process by which lost character may be retrieved—all conspire to diminish the apprehension with which a lapse from innocence was formerly regarded. To no other assignable causes can the crowded state of Gloucester gaol, mentioned by Mr. Cunningham, be owing; and to them also may be ascribed the extraordinary number of convicts confined in the *Maison de Force* at Ghent. Mr. Buxton, at page 96 of



his Prison Discipline, says, that its present management is so excellent that only ten per cent. of the felons return, and few of the others; but admits that their number amounts to 1300. This is an extraordinary proportion of malefactors for a narrow territory; and as Mr. Buxton says it had been resisted by Mr. Howard in 1775 or 1778 when its regulations were good, and again in 1785 when they were bad, it became desirable to know whether he had specified the number of prisoners which he found in it at one or other of these periods. Accordingly, on turning to page 79 of his account of German prisons, he states the number of prisoners he found there in 1775 or 1778 at 280 men and 117 women, making altogether 397 persons. The facts then stand thus:—in a country where the number and condition of the inhabitants is remarkably stationary, where, Mr. Buxton says, there are no capital punishments except for premeditated murder, and where the management is described as having generally been excellent, the number of criminals has more than trebled in little more than 40 years. Unless these circumstances can be sufficiently accounted for, it would be difficult to imagine any thing less favourable to the effect which mitigation of punishment has in preventing crimes, than the result which they exhibit.

When I visited this institution in the end of August, 1820, though I am neither entitled nor disposed to question its utility, it certainly occurred to me that there are many persons in England who entertain notions of the variety of employments there exercised by the prisoners, of the neatness of the place, and efficacy of the discipline, which an inspection of the establishment does not fully justify. Unless the account of the officer who attended me was incorrect, a much larger proportion of the prisoners return than Mr. Buxton in his tract on Prison Discipline has mentioned. Whether the statement of my informant or that communicated to Mr. Buxton is most consistent with the fact, I cannot take upon me to determine. Those who visit prisons are always withheld from a fear of being thought tiresome or impertinent from asking as much as they would wish. Without authority to examine the officers of gaols or houses of correction as long and as often as it may be thought necessary, no person will ever thoroughly understand their state and operation. All persons connected with them, invariably look upon it as necessary for the support of their own character, to exhibit them in a more favourable point of view than the truth will strictly warrant. The number of prisoners too seems

still to be increasing. When I was there, they amounted to 1196, and 150 had a few weeks before been sent off to Antwerp to what receive the appellation of *the gallies*, though they do not strictly answer to the name. At Wilwoerde, near Brussels, there are said to be other 800; and in the gallies just mentioned, there are about 1100 more, selected as greater criminals than those at either of the other two prisons, and confined either for a longer period, or for life, and in chains. Should these details be exact, there are now about 3096 convicts in the three great criminal dépôts of Brabant, besides all those who are condemned to one year's imprisonment or a shorter space by the different local jurisdictions; which excessive number in a country neither in extent nor population much exceeding Yorkshire, seems to afford stronger proof than the result of the discipline of any one particular prison could do, of the general inefficiency of the criminal laws there established.

If what has now been stated is correct, it certainly outweighs any contrary inference which can be drawn from the success which attended the first establishment of the prison at Philadelphia. Mr. Buxton says, that capital punishment was abolished in Pennsylvania in 1791; and he compares the state of the prison

from July 1789 to June 1791 under the old system, with its state from June 1791 to March 1795 under the new ; at the end of which time the comparison undoubtedly appears to be exceedingly in favour of the latter. To show in a satisfactory manner the effect of the new regimen in the prison of Philadelphia, a longer and later period should have been taken for the comparison. This there is now an opportunity of doing. In the Report of the Commissioners of the State of Massachusetts, which was made in 1817, at which time the discipline ought to have been completely established, and the results which it is calculated to produce, may be expected to be more distinctly perceived than they at first were, the Commissioners make the following very disheartening observation, ‘ How  
‘ little the common appearances of reformation  
‘ or amendment are to be trusted will appear  
‘ from the fact, that out of *four hundred and*  
‘ *fifty-one* convicts now in the Penitentiary at  
‘ Philadelphia, *one hundred and sixty-two* have  
‘ been before convicted and pardoned. In the  
‘ prison at New York, of all those who have  
‘ within the last five years been committed for  
‘ *second and third* offences, about *two-thirds* had  
‘ been discharged from their former sentences  
‘ by pardon.’

The preceding facts are believed to be among the most important relative to this point of those to which the public has access ; and unless they have been viewed imperfectly or erroneously, they do not seem to hold out any hope that the mitigation of punishment aimed at by the Committee on criminal laws, can at the same time be made effectual both for the purpose of prevention and reformation. To unite these two objects is the grand difficulty which presents itself to the advocates of secondary punishments at the outset, and will never cease to embarrass them in all the efforts they may hereafter make for the extreme mitigation of criminal law. All those who have had any practical acquaintance with the management of criminals, seem to coincide in opinion, that the shorter the space of time to which the imprisonment of convicts can be limited, the greater is the chance of their reformation being sincere and permanent. If it is not accomplished in five years, they say there is little prospect of its being brought about in 10 or 14. *Reformation* and *prevention* appear to be certain fixed points, an approach to one of which necessarily implies a departure from the other. Mitigation and abbreviation of punishment which is most favourable to *reformation*, is at the same time most



injurious to *prevention*. That tendency of the human mind, which disposes us to submit with resignation to a transient evil, makes it hopeless to expect that any short punishment however judiciously contrived can be made sufficiently dreadful for the purpose of *prevention*. On the other hand, that punishment which seems best calculated for prevention, must be allowed to be unfavourable to real *reformation*. Imprisonment on board the galleys, in gaol, or in a mine, from 5 to 20 years or for life, or even for 14 years with hard labour, destroys the convict as effectually as capital punishment could have done, by the stupidity, sullenness, or inveterate viciousness which it engenders. To attain the two objects at once by means of any one punishment seems utterly impracticable. Mitigation of punishment may fail to attain either, but it cannot attain both; and considering the extent, wealth, population, and habits of this country, to propose the extension of that mitigation so far as to produce the total or almost total abolition of capital punishment, would be one of the most adventurous schemes in legislation which has been projected from the days of Lycurgus to the present time.

In considering the comparative merit of different reclaiming and preventive punishments, it

ought not to be forgotten that the most effectual way to diminish crimes, is to remove, as far as any legislature can, the causes which are found to produce them. When Tacitus said of ancient Germany, '*plusque ibi boni mores valent, quàm alibi bonæ leges,*' he describes a state and condition of society to which every man must ardently wish that of his own country to approximate. Let officers of prisons, penitentiaries, and houses of correction, visiting magistrates, parliamentary commissioners, and charitable societies have done as much for the benefit of convicts as they can, it will be found far easier to preserve the virtue of the innocent than confirm the reformation of the guilty. One great cause of crimes is the distress created by want of employment, which is still forcing itself upon public attention. Changes of times and seasons will in every state occasionally deprive multitudes of the means of subsistence; but so remarkable a transition from activity to stagnation has seldom happened to an extensive country as that which still continues to bear heavy upon this. Into its actual extent, or probable duration, it is foreign to the present purpose to institute any inquiry. It is connected with the present subject only in so far as the want of employment which

it occasions among a redundant population, has always been a source of crimes, and is now a more abundant one than ever. Those who are in needy or declining circumstances show less disposition than in former times to bear their sufferings in silence, and less repugnance to relieve themselves by unlawful means. It is no doubt true that when want and indigence are widely diffused, all the aid that government can render to assuage them must comparatively be unavailing; but in the present emergency it would perhaps be wiser policy, both for our own welfare and that of our colonies, that ten times the sum should be expended in conveying honest poor to the settlements, which is now employed in transporting them to New South Wales after they have degenerated into convicts. If any remedy of this kind either could or ought to be applied, it should only be temporary, and preferred with no other view than as the substitution of a lesser evil for a greater. Provision ought also to be made, if possible, for the return of the money advanced either in the shape of money or labour; for, if this is not done, the effect of such a measure would in no respect differ from that of the poor-rates, which is another cause of the present increase of crimes, and one which is infi-

nitely more alarming. In whatever aspect the operation of the poor laws is considered, they show themselves to be the greatest moral plague that ever overspread a country. How far or how soon it might be practicable to repeal them, it may be difficult to determine; but perhaps no legislative provisions which ever were enacted in any age or country, have contributed so much to cherish every vice at the expense of every virtue, and to encourage disobedience to the laws among those who receive relief, in the exact proportion that they promote the impoverishment of those from whom that relief is extorted. Places of riotous assemblage, and especially unnecessary fairs, are another cause of crimes which ought, indisputably, to be either restricted or abolished. There are said to be no fewer than eighty-two fair days in the neighbourhood of London in the course of every summer, each exceeding another in scenes of disgusting disorder and debauchery. Why such nurseries of vice should have been so long tolerated in a civilized and moral country exceeds comprehension, for of all nuisances they seem to be the most easy to be suppressed and least susceptible of vindication. It has been asked, why should not the labouring classes

have their places and seasons of enjoyment and indulgence as well as the rich and idle? It is very right they should; but neither the one nor the other ought to be riotous or disorderly. Whether temptation throws out her lures on the village green, or in the streets and saloons of a luxurious city, can make no real difference. At whatever time or place there is a flagrant violation of the most obvious rules of decency and decorum, the arm of authority ought to interpose to put a stop to the disgrace and mischief it occasions. Public houses are almost equally objectionable. They exist in such multitudes, both in town and country, perpetually holding out attractions to those classes of the community who are least able to resist them, that they can be regarded in no other light than as schools of iniquity, of which no principle of law or policy can justify the continuance. To find fault with a just allowance of public houses, as places of reasonable recreation and refreshment, would no doubt be both preposterous and ridiculous; but to their excessive numbers, disorderly management, and unseasonable hours, many and grievous evils are distinctly owing. It is in them time and money, which tradesmen and labourers can ill spare, is spent; domestic un-



happiness created or increased ; bad connexions formed ; familiarity with crime established, and consent too often given to become participators in its perpetration. It is there illegal combinations are organized ; plans for the commission of crimes usually proposed and arranged ; and there the actors in them almost invariably reassemble after their accomplishment. That the continuation of them should ever have been seriously defended on the score of their being a rendezvous where criminals may be conveniently traced or caught seems almost incredible. It might with as much truth be contended, that covers are prejudicial to the breed of game, because it is sometimes shot where it is sheltered. Those who are in possession of the Report of the Committee on Gaols are intreated to turn to the evidence of Dr. Lushington, printed at page 162, and they will find proof of the encouragement and assistance which public houses lend to delinquents, of which till then they probably had no conception. It puts the necessity of a more effective preventive police in the strongest possible point of view. How that object is to be attained, whether by strengthening the hands of the commissioners of police by a larger force or greater powers,

or in any other manner, is an intricate subject, and one upon which it would in this place be unadvisable to enter. One thing is certain, that without giving them greater authority over certain sorts of houses and persons than they enjoy at present, no material good can ever be effected. This would in some instances demand the surrender of some of the privileges of the subject, and whatever sacrifice can reasonably be demanded for that purpose ought to be made without reluctance. The scenes of depravity disclosed in that Report, reflect disgrace on the license system, on the whole police of London, and excite wonder and astonishment that such deeds could be acted night after night, without colour or concealment, in any country where criminal law exists and civil order is established. If the multiplication and management of public houses really augment misery and guilt to that degree which has been here supposed, the good they do to agriculture and the revenue by the sale of spirits, is but a slender compensation for the evil they occasion. To connive at dissolute or desperate habits, because they may help to replenish an exhausted treasury, will be thought but a miserable shift for any minister, as long as any sense of right and wrong is left among us. It

has not even the merit of a sound state expedient ; for private vices, when traced through all their consequences, will never prove in the end to be public benefits ; and no prodigal heir ever disposed of his expectations so improvidently, as a finance minister, who, for the supply of the immediate wants of the state, practically assigns the expectant virtue of his country.

Still however I am persuaded, that with all the assistance which can be derived from preventive remedies, as well as corrective and preventive punishments, it will never be found practicable to dispense with the infliction of death altogether. It might even have proved expedient to inflict it of late years more frequently. This opinion has not been expressed without due consideration of the consequences to which it leads. None whose hearts or minds are regulated as they ought to be, can ever think or speak of that last resource of the law by which a fellow creature is precipitated into the presence of his Maker, and that perhaps before repentance has fully washed away his guilt, without being deeply impressed by the solemnity of the subject. But though this reflection requires us to subject every step of the reasoning employed to frequent and severe ex-

amination, yet if it is found to abide the test to which it has been put, it is neither wise at first nor will it be found merciful in the end to evade the conclusion to which that reasoning may fairly conduct us.

It has been objected to the infliction of capital punishment, or at least on any but extremely rare occasions, that it is neither congenial to the feelings of the people, nor consonant to the spirit of the Christian religion. These topics it is now the practice to introduce on almost every occasion on which criminal law is mentioned. That the feelings of the people ought invariably to be treated with tenderness and respect, there can be no question. But it is as true, on the other hand, that these feelings are peculiarly apt to be misunderstood and misled, as well as liable to great and sudden fluctuations; and that those in whose bosoms they run strong in favour of mitigation of punishment to-day, may by a violent attack on their property or peace of mind, have the whole current of them changed to-morrow. It is always dangerous to attempt to alter the laws, either by means of the public feelings, or because such feelings exist. The appeal ought to be made to the understanding and not to the affections. Let the understanding once be con-

vinced, and it will ultimately controul the feelings; but if the feelings should ever be hurried away in opposition to the understanding, sooner or later there will be a reaction, and then it may safely be predicted that ample amends will be made for the mistake by running as far in an opposite direction. At present there is no reason to believe, whatever declarations may have been made to the contrary, that the feelings of the great majority of the country would refuse to acquiesce with readiness in the continuance or introduction of any penal code, whether gentle or severe, by which the commission of crimes could most effectually be stayed. The Christian religion has as little to do with this discussion, as popular feelings ought to have. How irrelevantly that sacred subject is frequently introduced, may be seen by the following extract taken from a petition from London, Westminster, and Southwark, which was presented to the House of Commons in 1821, respecting the transfer of the elective franchise from Grampound to Leeds. ‘ The Petitioners  
‘ however beg leave respectfully to declare to  
‘ the House their strong aversion to the principle of the clause introduced into the said bill,  
‘ setting up the possession of wealth as the qualification for the elective franchise, by with-



‘ holding the right of voting from all such as  
‘ shall not occupy premises to the annual value  
‘ of 20*l.*, in lieu of the system sanctioned from  
‘ time immemorial by the common law, by  
‘ which all were intitled to vote who paid scot  
‘ and bore lot; it appearing to the Petitioners  
‘ that civil disqualifications and exclusions  
‘ founded on such an invidious innovation, *are*  
‘ *ungenerous, contrary to the analogy of the Con-*  
‘ *stitution, directly opposed to the great character-*  
‘ *istic of the Christian religion, and little suited to*  
‘ *the improvement and hoped for progress of the*  
‘ *people in knowledge.*”

Expressions indicative of more pure and exalted sentiment than those which are foisted into the democratic protest, are not to be found either in the circular of the Society for the Improvement of Prison Discipline, or in any of the petitions for the revision and mitigation of the Criminal Law, or can more convincingly prove how easy it is for weak or designing men to use words of high and serious import, without any of the reverence with which the mention of them ought to be accompanied. The Christian religion ought never to be named but with the deepest awe, and cannot be too sparingly brought forward in matters of worldly concern and doubtful disputation. That it en-

joins humanity and mercy in the strongest and most persuasive general terms is assuredly true; but to what acts or regulations the epithets of merciful or humane ought to be ascribed and from what they ought to be withheld, is here the very point in question; and this the Christian religion, in conformity with the heavenliness of its means and end, has left every political society to determine for itself. Its very existence implies the power of doing every act which may be necessary for its continuance and well-being, and if there are offences which nothing but capital punishment will repress, it follows as a necessary consequence that it is entitled to impose it. We have with astonishment heard capital punishment denied to be the most dreaded of all human punishments. The sentiments and history of all mankind refute the allegation. If there are a few common thieves or other hardened malefactors for whom death has no terror, they are exceptions to the general rule, and not examples of the general rule itself. Let their conduct be subjected to a narrow scrutiny, and the greater part of them will prove to be no exceptions at all. The very exertions which on the near approach of death they find it necessary to make, in order to "*screw their courage to the sticking place,*" is the

most convincing evidence which could be afforded of their apprehension of an event which they pretend to regard with such perfect indifference. By most people it is admitted that capital punishment may be an object of terror if sparingly used; but then it is said the laws of this country so frequently enforce it, that like an overstrained spring it has lost all its efficacy either on criminals or the public; and that, at most executions, the feeling excited is adverse to the laws, and favourable to the sufferer. That the first emotion which arises in the mind on such an occasion should be that of commiseration for the culprit is perfectly natural, and that the feeling just mentioned has within these few years been in some instances loudly expressed, is indubitable. By whom, and by what means, and for what purposes, this clamour was raised and has been continued, it would not be difficult to trace, and somewhat instructive to explain. As usually happens, however, in violent ebullitions of popular passion, it owes its existence either to entire ignorance or gross perversion of the facts on which it pretends to be founded. It is believed by many, and those too whom one would expect to be better informed, that six or eight persons are executed at the door of Newgate

at the beginning of almost every week throughout the year, besides hundreds who suffer in the course of the spring and summer assizes throughout the country. For the correction of such an error the following documents are quoted from the Appendix to the Report of the Committee on Criminal Laws. The first is a table of the number of capital convictions and executions in London, from the year 1700 to 1755 inclusive. In 1700 the convictions were 21, the executions 8.

1701.	14.	3.—	1702.	8.	4.—	1703.	9.	1.—	1704.	6.	1
1705.	19.	8.—	1706.	11.	2.—	1707.	13.	8.—	1708.	14.	4
1709.	10.	1.—	1710.	17.	0.—	1711.	17.	1.—	1712.	18.	6
1713.	28.	11.—	1714.	28.	11.—	1715.	32.	14.—	1716.	35.	12
1717.	35.	11.—	1718.	25.	5.—	1719.	31.	7.—	1720.	22.	12
1721.	26.	11.—	1722.	19.	12.—	1723.	7.	2.—	1724.	14.	4
1725.	15.	8.—	1726.	22.	13.—	1727.	7.	1.—	1728.	25.	17
1729.	14.	5.—	1730.	7.	3.—	1731.	11.	9.—	1732.	15.	7
1733.	9.	3.—	1734.	7.	1.—	1735.	11.	1.—	1736.	7.	3
1737.	12.	0.—	1738.	15.	8.—	1739.	11.	3.—	1740.	14.	4
1741.	11.	5.—	1742.	12.	6.—	1743.	12.	8.—	1744.	21.	15
1745.	8.	4.—	1746.	4.	0.—	1747.	5.	0.—	1748.	5.	0
1749.	12.	0.—	1750.	23.	9.—	1751.	13.	8.—	1752.	5.	4
1753.	9.	7.—	1754.	12.	6.—	1755.	11.	5.			

The second is a table of the number of capital convictions in London and Middlesex, from 1749 to 1818 inclusive. In 1749 there were 61 convictions and 44 executions.—

1750.	84.	56.	—	1751.	85.	63.	—	1752.	52.	47.
1753.	57.	41.	—	1754.	50.	34.	—	1755.	39.	21.

1756.	30.	13.	—	1757.	37.	26.	—	1758.	32.	20.
1759.	15.	6.	—	1760.	14.	10.	—	1761.	22.	17.
1762.	25.	15.	—	1763.	61.	32.	—	1764.	52.	31.
1765.	41.	26.	—	1766.	39.	20.	—	1767.	49.	22.
1768.	54.	27.	—	1769.	71.	24.	—	1770.	91.	49.
1771.	60.	34.	—	1772.	79.	37.	—	1773.	101.	32.
1774.	87.	32.	—	1775.	74.	46.	—	1776.	80.	38.
1777.	63.	32.	—	1778.	81.	33.	—	1779.	60.	23.
1780.	94.	50.	—	1781.	90.	40.	—	1782.	108.	45.
1783.	108.	45.	—	1784.	153.	56.	—	1785.	151.	97.
1786.	127.	50.	—	1787.	113.	92.	—	1788.	83.	25.
1789.	97.	26.	—	1790.	67.	33.	—	1791.	83.	34.
1792.	89.	24.	—	1793.	58.	16.	—	1794.	71.	7.
1795.	49.	22.	—	1796.	93.	22.	—	1797.	81.	19.
1798.	82.	19.	—	1799.	72.	24.	—	1800.	101.	19.
1801.	101.	14.	—	1802.	97.	10.	—	1803.	82.	9.
1804.	67.	8.	—	1805.	63.	10.	—	1806.	60.	13.
1807.	74.	14.	—	1808.	87.	5.	—	1809.	89.	8.
1810.	118.	13.	—	1811.	106.	17.	—	1812.	132.	19.
1813.	138.	17.	—	1814.	158.	21.	—	1815.	139.	21.
1816.	227.	29.	—	1817.	208.	16.	—	1818.	201.	21.

The third is a table of the total number of persons who have been committed, capitally convicted, and executed, in England and Wales, between 1805 and 1818 inclusive. In 1805 4,605 were committed, 350 capitally convicted, and 68 executed.

1806.	4,346.	325.	57.	—	1807.	4,446.	343.	63.
1808.	4,735.	338.	39.	—	1809.	5,330.	392.	60.
1810.	5,146.	476.	67.	—	1811.	5,337.	404.	45.
1812.	6,576.	532.	82.	—	1813.	7,164.	713.	120.
1814.	6,390.	558.	70.	—	1815.	7,818.	553.	57.
1816.	9,091.	890.	95.	—	1817.	13,932.	1,302.	115.
1818.	13,567.	1,254.	97.					



It will now be seen how groundless the invectives are, which have been directed against the late supposed actual or comparative increase of executions. The fact is exactly the reverse of that which is assumed; and since the year 1750, executions have decreased in the exact proportion in which convictions have augmented. The difficulty no doubt is, to discover whether the decrease in the number of executions has been the cause of the increase of crimes. Had the increase of capital punishment invariably produced a diminution of convictions in subsequent years, or had a diminution of capital punishment produced an increase of convictions, the point would have been as satisfactorily established as the nature of the case admits. But a reference to the tables just quoted will show that no uniform result can be deduced from them. It is true that in this department of policy, there are a greater number of circumstances to disturb the usual course of events than in almost any other. A distressed or agitated state of the country may have a tendency to increase crimes, though the terror occasioned by executions may greatly tend to reduce them; and on the contrary, the favourable state of all these may tend to diminish crimes, though the decrease of capital punishments would other-

wise have increased them. As no facts ought to be suppressed which bear upon so interesting a question, the preceding tables are inserted in the state in which they appear in the Appendix to the Report on Criminal Laws, whether they may ultimately prove favourable to the opinions here expressed or not, and that those who examine them may be left at full liberty to draw whatever conclusions they may think most consonant to the truth.

Those who urge the abolition of capital punishment, ask if it is possible to produce an instance of a country, which was at once remarkable for the rarity of its crimes and the severity of its punishment; and endeavour to prove from some facts contained in these tables, and a few drawn from other sources, that diminution of crimes has generally or invariably accompanied mitigation of punishment. An extreme case usually proves nothing in favour of those by whom it is advanced, or against those by whom it may be admitted. Probably no country can be found, where crimes have been at once remarkably rare, and punishment remarkably severe. It is not necessary to produce an example of such a sort. Reduce the supposed severity of punishment to a reasonable degree on the one hand, and rarity of crimes on the

other, and the question may be satisfied by asking in return, if a country is to be found where crimes were rare, in which punishments do not possess a considerable degree of severity. Take the instance of Scotland, which is perhaps the best, because the nearest, and because the facts connected with it are capable of the easiest ascertainment. If any one looks into Hume's Criminal Law of Scotland, he will probably be satisfied that during the whole of the 18th century neither the letter nor practice of the criminal law of that country was particularly mild, and yet offences during that time were probably of more rare occurrence than in almost any other state in Europe.

The facts contained in the tables which have been relied upon as militating against severity are, the increase of certain excise offences which has taken place since they were made capital, and the diminution of convictions for stealing from bleaching grounds since the capital punishment was abolished. It would be hard if those who are unable to approve of all the principles of penal legislation which have been lately broached, were bound to defend every increase and resist every relaxation of severity. The late extension of capital punishment to a variety of excise offences, appears in every

point of view to have been unadvisable, and cannot well be of any avail to show its efficacy in preventing crimes, because in fact it has scarcely ever been inflicted. With regard to larceny from bleaching grounds, those who are exposed to it, may from some cause be better able to protect their property without the help of capital punishment than they were formerly, or capital punishment may have been unnecessary from the beginning. The particulars which are now before the public, seem to show that mitigation of punishment has in this instance been judicious, and the fact ought to be allowed whatever weight it is entitled to in the general argument. But on looking through the whole returns in the Appendix to the Report on Criminal Laws, I cannot find that more than four individuals have ever suffered capitally under this act, and though it is to be regretted that even so many should have been executed for an offence which might have been effectually prevented by less severity, it would be exceedingly precipitate to infer from this that diminution of crimes may generally or invariably be expected to attend mitigation of punishment. Two other facts which are furnished by America have been adduced, from which the same conclusion is supposed to re-

ceive considerable confirmation. One of them is the diminution of crimes which followed the great mitigation of the penal code of Pennsylvania in 1791, and the increase of crimes which took place at the same time under the unmitigated code of New York. Whatever the cause of the diminution of crimes which occurred in Pennsylvania at the time alluded to may have been, it has not been of long continuance, for it has been already mentioned that the number of untried prisoners returned on the calendars at the different sessions of the mayor's court of the city and quarter session of the city of Philadelphia, was in 1813—516; in 1814—538; in 1815—829; and in 1816—1,058. Mitigation of punishment may have here contributed to produce multiplication of crimes, but cannot probably be said to have diminished them. Let us now proceed to the case of New York. The criminal law of that state was mitigated it would appear in 1797, and in the report of the commissioners of the state of Massachusetts, it is specified as a proof of the advantages of the new code, that the number of convictions for highway robbery from the year 1797, when the penitentiary was established, to the year 1805, was only 1. It appears, however, from *A View of the New York*



*Prison by a Member* of the institution, that the total number of persons admitted to the New York state prison from its establishment in 1797, to the end of 1814, was 3,062. Of these there were 26 for arson, 14 for rape, 5 for sacrilege, 8 for highway robbery, 50 for house-breaking, 116 for burglary, and no fewer than 356 for forgery. In 1814, 213 were admitted, of whom there were 3 for rape, 3 for highway robbery, 2 for arson, 7 for burglary, and 26 for forgery. Whether the mitigation of criminal law has caused an increase or diminution of the number of criminal offences these documents afford no criterion for judging, but the aggravation of the crimes for which prisoners are committed to the state prison, in proportion to the number of them, is in almost every instance beyond what is known in this country. This difference is observable in forgery in particular. In England the number convicted of that offence forms only an 100th part of the whole criminals. In New York, on the contrary, forgers amount to no less than 1-8th of the whole number. In other words, there are twelve times as many convicted forgers in America as in England, which is a disparity for which no readiness to prosecute which may exist in America can sufficiently account. From some

particulars I have heard respecting France, I am also inclined to believe that the mitigation of the law of that country has tended to increase both the number and aggravation of crimes, but they are not sufficiently precise or authentic to be detailed, or to have any reliance placed upon them.

The general complexion of the tables published by the Committee on Criminal Laws, leads to the same result: instead of showing that abolition of capital punishment and diminution of crimes usually go together, they seem to show that great mitigation of punishment, especially if continued for several years together, has so generally been followed by multiplication of crimes, as to afford strong presumption that a necessary connection exists between them. An instance of this seems to occur in 1746, 7, 8, and 9, when no executions for robbery took place. It was towards the latter part of this period that Fielding published his pamphlet on the increase of robbers, and accordingly in 1750, when the course of lenity adopted may be supposed to have had the fullest effect on robbers, the number of convictions is double that of the year before. In that year 9 were executed, and 8 in 1751, and the evil was brought back to its former level.

It is also well known to those practically acquainted with criminal law, that certain crimes, from the lenity of particular judges or some other accidental causes, from time to time become unusually prevalent in different parts of the country, and that the infliction of capital punishment has almost always succeeded in repressing it. Most barristers, who have practised for a considerable time on any of the circuits, are able to give one or two instances in which this has happened within their own knowledge, and the opinion is so generally received, that it is not easy to believe it to be without foundation.

But by far the strongest confirmation of the relation between extreme restriction of capital punishment and increase of crimes, and upon which I should be supposed principally to rest, arises from the experience of the last 15 or 20 years. *The annual average number of capital convictions in London and Middlesex, from 1749 to 1755, was 61; the number of executions 43. From 1763 to 1769, the number of capital convictions was 52; the executions 26, or 1 execution out of 2 convictions. This proportion continued till 1790. The proportion of executions to that of capital convictions went on diminishing till 1808, when there were 87 ca-*

pitally convicted, and only 5 executed. In this year the executions bore an unusually small proportion to the convictions, but the executions had gone on diminishing so fast that in 1805 they were to the convictions as 1 to 5, and in 1818 only as 1 to 13. The average annual number of capital convictions which in the 7 years of war from 1756 to 1763 were only 25, and in the 7 years of peace from 1763 to 1769, (as it is in peace that crimes seem to be more prevalent than during war,) were only 52, on an average of the 7 years, from 1811 to 1818, amounted to no less than the annual number of 172. In 1805 the executions were to the convictions as 1 to 5, in 1818 as 1 to 13, and in this short period the number of commitments and convictions has increased threefold. The Committee on Criminal Laws seem to have shown satisfactorily, that this increase has not arisen from any temporary rigour on the part of prosecutors, nor is it easy to suppose that it can be altogether accounted for from the circumstances of the times. The diminution of capital punishment presents itself as a more obvious and powerful cause than either; knowing, as criminals do, that this diminution has been produced by the reasoning and declamation which have during that time been directed

so unremittingly against it. Mr. Harmer has remarked in his evidence, ‘ that thieves observe the sympathy of the public. It seems (he says) ‘ to console them, and they appear ‘ less concerned than those who witness their ‘ sentence.’ It not only consoles but emboldens them. The view which they take of criminal law is extremely different from that of Mr. Buxton. Throughout the whole of his speech Mr. Buxton has attended solely to *the letter* of the law, and has scarcely in a single instance deigned to allude to *its administration*. In whatever way this oversight has happened, it seems fatal to the whole course of his argument. He not only complains that the law is more severe in appearance than in substance, but that its substantive severity is still too great, and yet never notices the fact that crimes have increased exactly as this substantive severity has gone on diminishing. Most of those who are tried for crimes on the other hand are entirely practical persons. They seldom think of the letter of the law, but always of its administration, and finding capital punishment getting out of vogue, they are induced by the removal of that check to persevere in evil themselves, and enabled to corrupt others. Of all mankind criminals are the most acute in



discovering arguments in their own favour, and in turning to advantage the sentiments and observations of others indicative of pity for their situation. With great unwillingness to withdraw inveterate or desperate offenders from capital punishment, it is hoped no expression has been used which can be construed into an approbation of its inconsiderate exercise. There can be no good reason for exercising severity towards the few, but that of compassion to the many; and a deep conviction that punishment may be mitigated to so great a degree, that thousands may deplore it as the cause of their imperceptible deviation from innocence.

*Cuncta prius tentata : sed immedicabile vulnus,  
Ense recidendum, ne pars sincera trahatur.*

The abolition or extreme restriction of capital punishment may therefore have effects more painful and deplorable than those of capital punishment itself, and not the less real, because it is impossible to specify the manner and individual instances of its operation. The result of it in this country seems however in some degree to have at last become palpable. The total number of commitments for one year were in 1805, 4,605, and the convictions 2,783, and in 1818 the commitments had increased to the

enormous number of 13,567, and the convictions to 8,958. So far then, as the facts before us enable a conclusion to be drawn, it is a more severe, and not a more mitigated exercise of capital punishment, which they seem to warrant.

III. The third and last subject into which it was proposed to inquire, was the best method which can be adopted for the improvement of Criminal Law. Instead of following that plan of proceeding upon which the Committee appear to have set out, which is that of introducing a series of consecutive amendments, it is suggested that it might be more advisable at once to attempt a consolidation of the whole system.

I am fully aware of the suspicion with which such a proposal will by various persons be received. Besides those who candidly assign their reasons for believing it to be impracticable, there are others who may discountenance it, because the country has thriven, and the law long gone on without it; or who think that such a thing is incapable of being executed for no other reason but because it has never seriously been attempted. It may tend somewhat to disarm the hostility of such opponents, to be assured that the opinion now intimated

has not been formed rashly, or expressed without extreme hesitation. I am on that account the more anxious to guard myself against the supposition of entertaining any propensity to the introduction of theoretical notions into any portion of our jurisprudence. No new principles or component parts are desired for the construction of a fresh Penal Code, but only a more convenient distribution of the old ones. This would make it more compact, regular, and intelligible, and exceedingly diminish those 200 capital punishments, which it is said to authorise, and which have been recounted to its prejudice in almost every corner of Europe. It is the misfortune of the criminal law of England that it has legislated separately not only for every species of offence, but for every possible combination of circumstances in which that species can be committed. This has caused it to be spread over so many volumes, and the enactments on the same subject to become so numerous, complicated, redundant and incongruous, that the legislature is loudly called upon to attempt its simplification. The more the subject is reflected on, the more convincingly will it appear that some condensation of the criminal law must in one way or another be undertaken at no distant period,

and it usually proves least troublesome and dangerous to do that completely which can no longer be avoided. It must not be supposed, however, that such a measure is now broached for the first time. Although no serious step has ever been taken towards its accomplishment, it is a matter of historical record, that it was as distinctly contemplated 200 years ago as it can be at the present moment. Not to mention the appointment of Commissioners for the reformation of the canon law by 27 Hen. VIII. c. 15., and 3 & 4 Ed. VI. c. 11., it is stated by Lord Bacon, v. 2. p. 326. to have been announced by the chancellor in full parliament, during the 35 Eliz. that it was her Majesty's intention to amend the laws: and it appears by the Journals of the House of Lords of the 23d of July, 1610, that it was part of the claim of the House of Commons, in the treaty with James I. for the abolition of the Court of Wards, 'That His Majesty be petitioned to appoint some to make a diligent inquiry of all the penal statutes of the realm, to the end that such as are obsolete and unprofitable may be repealed; and that for the better ease and certainty of the subject, all such as are profitable concerning one matter, may be reduced into one statute.' Nothing

can exceed the clearness, energy, and comprehensiveness of the expressions here employed. Whether the subject was at all revived during the next 100 years is not known. It appears by the Journals of the House of Commons, v. 22. p. 71, that a Committee was appointed 'to consider the laws in being with respect to the punishment of criminals, and how the same may be made more effectual,' and that another was appointed in 1770, (Journals, v. 33. p. 27,) 'to consider of the criminal laws;' but it would seem that the first had no effect, and it appears by the volume last quoted, that the second contented itself with recommending the repeal of four obsolete and unimportant enactments. But these ineffective intentions of the government are not the only circumstances which afford countenance to such a consolidation as that which has been mentioned. It is further supported by the recorded and concurring opinions of Bacon, Coke and Hale—names which, considering the extent of their capacity, and experience in business, ought to have greater weight than those of any three lawyers that ever lived in England. The sentiments of Lord Bacon appear from his Dedication, to Queen Elizabeth, of his Elements of the Common Law of England, and



still more particularly from the proposal made by him to James I. ‘touching the compiling and amendments of the laws of England.’ This proposal extends to the law generally, but more especially to the penal part of it.—‘This work,’ he says, ‘shining so in itself needs no taper. For the safety and convenience thereof, it is good to consider, and to answer, those objections or scruples which may arise or be made against this work.’

The two chief objections stated by him are :  
1. ‘That it is a thing needless, and that the law, as it now is, is in good estate comparable to any foreign law; and that it is not possible for the wit of man, in respect to the frailty thereof, to provide against the incertainties and evasions or omissions of the law.’

To which he immediately afterwards makes this reply :—‘For the comparison with foreign laws, it is in vain to speak of it; for men will never agree about it. Our lawyers will maintain for our municipal laws; civilians, scholars, travellers, will be of the other opinion.’

2d objection, ‘That it is a great innovation; and innovations are dangerous beyond foresight.’

To this he answers with that weight of thought and expression which so peculiarly be-

longs to him,—‘ All purgings and medicines,  
‘ either in the civil or natural body, are innovations: so as that argument is a common  
‘ place against all noble reformatations. But the  
‘ truth is, that this work ought not to be termed  
‘ or held for any innovation in the suspected  
‘ sense. For those are the innovations which  
‘ are quarrelled and spoken against, that concern the consciences, estates, and fortunes of  
‘ particular persons; but this of general ordinance, pricketh not particulars, but passeth  
‘ *sine strepitu*. Besides, it is on the favourable  
‘ part; for it easeth, it presseth not: and lastly,  
‘ *it is rather matter of order and explanation, than*  
‘ *of alteration.*’

The opinion of Lord Coke in the Preface to his 4th Institute, is expressed in the following terms:—‘ As concerning the correcting of the  
‘ common laws or ancient customs of England,  
‘ may be applied all that hath been said concerning making of laws: only this add; that  
‘ it hath been an old rule in policy and law,  
‘ that *correctio legum est evitanda*. And yet  
‘ concerning certain of our penal statutes, to  
‘ repeal many that time hath antiquated as  
‘ unprofitable, and remain but as snares to entangle the subjects withal; and to omit all  
‘ those that be repealed, that none by them be

‘deceived, as for example, concerning drapery  
‘or such like. To make one plain and per-  
‘spicuous law, divided into articles, so as every  
‘subject may know what acts be in force, and  
‘what repealed, either by particular or ge-  
‘neral words, in part or in the whole, or what  
‘branches and parts abridged, what enlarged,  
‘what expounded; so as each man may clearly  
‘know what and how much of them is in force,  
‘and how to obey them, it were a necessary  
‘work, and worthy of singular commendation;  
‘which his Majesty, out of his great wisdom  
‘and care to the commonwealth, hath com-  
‘manded to be done: for as they now stand, it  
‘will require great pains in reading over all,  
‘great attention in observing, and greater  
‘judgment in discerning, upon consideration of  
‘the whole, what the law is in any one parti-  
‘cular point; but with this caution, that there  
‘be certain statutes concerning the administra-  
‘tion of justice, that are in effect so woven into  
‘the common law, and so well approved by  
‘experience, as it will be no small danger to  
‘alter or change them; and herein, according  
‘to his royal commandment, (God willing)  
‘somewhat in due time shall be performed.’—  
He adds—‘For bringing of the common laws  
‘into a better method, I doubt much of the  
‘fruit of that labour.’

The last person alluded to is Lord Hale, and for his judgment the reader is referred to his ‘Discourse on the Improvement of the Laws of England,’ published in Hargrave’s collection of Juridical Tracts, which, though remaining in an unfinished state, well deserves a greater share of notice than has yet been paid to it. Those who have hitherto considered that exalted person merely as a dry practical lawyer and pious man, will there see him evincing a freedom from passion and prejudice, and a clearness and comprehensiveness of understanding, in no respect inferior to that of Bacon himself. More judicious maxims than the following cannot be met with. ‘Therefore it is of great importance upon any alteration of the laws, to be sure,—1. That the change be demonstrable to be for the better, and such as cannot introduce any considerable inconvenience in the other end of the wallet. 2. That the change, though most clearly for the better, be not in foundations or principles, but in such things as consist with the general frame and basis of the government or law. 3. That the change be gradual and not too much at once, or at least more than exigence of things requires.’

He afterwards makes some observations,

which, though they are not intimately connected with the present subject, are yet so applicable to the present times, that no apology will be required for quoting them. ‘ Exemplary mis-  
‘ carriages in the late times of such as have  
‘ undertaken reformation, both in matters civil  
‘ and ecclesiastical, hath brought a disrepute  
‘ upon the undertaking of any reformation in  
‘ either: so that the very name of reformation  
‘ and a reformer, begins to be a stile or name  
‘ of contempt and obloquy; so that men are  
‘ as fearful to be under the reputation of a  
‘ reformer of the law, as they would be of the  
‘ name of knave, or fool, or hypocrite. And  
‘ upon these and the like accounts it fares with  
‘ the law and sages thereof, as to the point  
‘ of reformation of the law, as it did with the  
‘ present age and the virtuosi of Parnassus  
‘ in Bocaline. They dare not meddle with it,  
‘ but let it live as long and as well as it can in  
‘ the state they find it. Only to save their  
‘ credit upon such occasions, they meddle with  
‘ some little inconsiderable things, as they set  
‘ the price upon turnips and carrot seed, but  
‘ nothing is dared to be done of use and im-  
‘ portance.’—And at page 270, ‘ All that which  
‘ I contend for in the first or second chapter is,  
‘ not to render laws of men like laws of nature,



‘fixed and unalterable, but that it be done  
‘with great prudence, advice, care, and upon  
‘a full and clear prospect of the whole busi-  
‘ness.’ And immediately afterwards, ‘I shall  
‘add but this one thing more, that it may justly  
‘be feared, that if something considerable for  
‘the reformation of things amiss in the law be  
‘not done by knowing or judicious persons, too  
‘much may some time or other be done by  
‘some, either out of envy at the professors, or  
‘mistaken apprehensions, or popular humours.  
‘The amendment of things amiss timely, by  
‘knowing able and judicious men that under-  
‘stand their business, may do very much good,  
‘and prevent very much evil that may other-  
‘wise ensue; and when the business is begun  
‘by such hands, it may possibly be too late to  
‘allay it. And it will have this plausible pre-  
‘tence, that the judges and lawyers will do  
‘nothing to the laws, and therefore it shall be  
‘done by other hands. Such a humour would  
‘be more easily prevented by a wise and  
‘seasonable undertaking in this kind, which  
‘would not be so easily diverted or allayed,  
‘if once it should be flying. And thus much  
‘for this chapter.’

These quotations have not been introduced for the purpose of gracing the discussion with

illustrious names, or in order to bend expressions to a different purpose from that for which they were intended, but because they are deliberate opinions, announced by men whose authority we are accustomed to revere, on the very measure now under consideration; and brought forward to show that the undertaking which has been suggested is neither new nor chimerical. From the accumulation of penal statutes which has since taken place since their time, and the additional volumes over which they are scattered, it must be far more necessary now than it was at the period when their sentiments were delivered. If further and later testimony to the same effect is wanting, it is ready to be produced, and of a character to which no objection can be offered. It was stated by Mr. Wilberforce in the House of Commons, on the 18th of May, 1808, (11 *Hansard's Debates*, p. 400,) that at one time it was Mr. Pitt's intention to have proposed a Digest of the whole Criminal Law. The annunciation of the intention is full and precise, though the momentous nature of the events which occupied his attention during the latter years of his life prevented it from being carried into execution. The utmost success with which the accomplishment of such a measure could

have been attended, would in this country and at that time have contributed so little to the extension of his fame, that nothing but a deep conviction of its urgency and utility could have prompted him to entertain it.

It may now be proper to suggest by what means a general revisal of the criminal law might be executed, and what the advantages are which one great improvement would possess over a multitude of successive partial amendments.

The first step would be to extract carefully from the Statute Book the whole of the penal laws now in force, classing them under different heads, in chronological order, and in the exact words in which they now appear. No classification could be devised which would give universal satisfaction, or against which solid objections might not be raised, but this does not seem a conclusive argument against all such attempts. Although it is scarcely possible that any division should be suggested which would at once be natural and complete, yet as the Appendix to the Report of the Committee on Criminal Laws, shows the officers of the courts of assize to have classed their returns nearly in the same manner, without having had any communication with one another, this cir-

cumstance proves almost to demonstration, that the chief subjects of criminal law might be comprised under thirty or forty different heads. The labour of ascertaining the law, on any point to which there was occasion to refer, would thus be materially diminished, and much assistance towards its future amelioration would be derived from the mere juxta-position of materials of a kindred nature. Indeed it is not easy to conceive how an extensive or safe alteration of the criminal law can be founded on any other basis, than that of some such collection of scattered enactments as has been now pointed out. What the next stage of proceeding ought to be, might create considerable difference of opinion. The most desirable might be, to effect a consolidation of all the enactments relating to each of the heads just mentioned, preserving the substance entire, and merely removing the repetitions, redundancies and inconsistencies, which would then become perceptible. By these means the substance of the provisions of the present Criminal Law would be preserved entire, but greatly reduced in bulk, improved in form, and rendered more intelligible whether considered singly or with reference to one another. The execution of this task would no doubt require much time,

labour, and circumspection; but whether the legislature apportioned the execution of it among certain of its own members, or delegated it to others, it might be expected that in five or six years, it might be so far digested as to become a decided improvement on the present system. When sufficiently matured, it might be passed as one act, and till then there would be no serious inconvenience in permitting the law to remain in its present state. It is in no respect the intention of the preceding suggestions to recommend any particular plan of revision. Its sole purpose is to remove the objections which would have been raised, if the proposal had been unaccompanied with any such specification; and to show that when a consolidation of the whole penal code was recommended, it was not done without a distinct, though perhaps, erroneous conception both of the end in view, and of the means by which it is attainable. Every effort in this way, which would be safe and effectual, ought to be received with favour; and it should not be forgotten that it would be one of the chief advantages of reducing this branch of our municipal institutions to a succinct and definite form, that those who proposed amendments upon it, and those who had to decide upon them,



would more clearly perceive both what the law is, and what the effect of a future projected alteration would be. It has sometimes been supposed that an ample index to the present laws would, with less hazard, answer all the ends of a digest. There is no reason to believe that it would. An index may be inaccurate, or deficient; it never saves practising lawyers the trouble of reference to the acts themselves, and to persons not practising is of little use at all. The farther indexes, excerpts, epitomies, or any other helps, are multiplied, which are said to supersede a consolidation of the criminal laws, the more necessary will that consolidation appear. To go on without it, is to legislate in the dark, without knowing with any degree of precision what the effect of that legislation will be. This is the main and insurmountable objection to a series of successive separate amendments of the criminal law, and a strong illustration of it is exhibited in the Report of the Committee on Criminal Laws itself. The 5th act in the second class of offences which the Committee propose to repeal, is that of cutting down growing trees, which was formerly noticed; and this, along with all others contained in the same class, the Committee say, they ‘ would make punishable

either by transportation or imprisonment with hard labour.' Now supposing they should think fit to punish it by imprisonment with hard labour by a new law. The new act would be that under which it would be intended that proceedings should take place; while at the same time the 15 Ch. II. c. 2. against the unlawful cutting or stealing or spoiling of wood or underwood, which awards compensation to the owner and ten shillings to the poor, or one month's imprisonment in the house of correction for the first offence,—one month's imprisonment for the second,—and for the third, imprisonment as incorrigible rogues and vagabonds; and also the punishment of transportation, imposed by 6 Geo. III. c. 48, would remain unrepealed. This the Committee cannot have intended, and the oversight could not have happened if a collection of all the penal statutes on the same subject had been before them when they began reform. But this is not all. An act 'for providing summary remedy for certain wilful and malicious injuries' done to trees, wood, and underwood, as well as to other objects, was passed in 1819, and constitutes a fourth punishment, totally different from either of the former three. While the Committee are thus employed in amending the old law, and cor-

recting the mistakes or oversights which they themselves and other members of the legislature may in the mean while have committed, new enactments will follow one another with perplexing rapidity, before Criminal Jurisprudence has been reduced to any tolerable order. Than such a state of things nothing can be more mischievous. Neither judges, lawyers, prosecutors, prisoners, nor juries, can feel assured that they exactly know the present state of a law which is undergoing incessant revolution. Alteration of the law should be avoided as long as it can; but, when it has become indispensable, the care and consideration which is bestowed upon any important change, make it less to be apprehended than a succession of minor innovations which escape without observation.

Having now inquired successively into each of the divisions of the Report of the Committee on Criminal Laws; into the possibility of abolishing the punishment of death, together with the effects of the subordinate punishments it has been proposed to substitute in its stead; and lastly, into the propriety of attempting a consolidation of the whole criminal law; all the topics have been brought under discussion to which it was wished to direct the attention

of the reader. Before coming to a conclusion I may be permitted to express some degree of anxiety that the object of this inquiry should not be misunderstood. If there really are any persons who believe that no further endeavours should or successfully can be made for the reformation of criminals or mitigation of criminal law, I hope no expression or argument has been used, which can justly subject me to the imputation of participating in their sentiments, or of entertaining the smallest degree of aversion to the introduction of any practicable improvement. So far is this from being the case, that I shall rejoice in the discovery, and if it were in my power should cheerfully contribute to the adoption of every means by which punishments may be mitigated, provided there is sufficient evidence that they will continue equally preventive. The preceding reasoning, therefore, is intended not to retard but promote the real advancement of penal jurisprudence, by pointing out the danger which may result from the introduction of sudden and violent alterations, the safety and adequacy of which seems so extremely questionable. It is impossible not to suspect that many of the measures which have lately been laid before the public for the mitigation of punishment, have been

crude and undigested, and the language used to recommend them very injudicious. Of this the bill for altering the punishment for forgery, which was introduced into the House of Commons in 1821, affords a prominent example. It was without hesitation proposed by this bill to abolish capital punishment in all cases of forgery, except that of Bank of England notes. Even this exception was said to be a sacrifice of principle to prejudice, and in the course of the discussion strong insinuations were thrown out—not only against all capital punishment for forgery, but against all capital punishment whatsoever. Had the opposite course been pursued, and a bill introduced for abolishing capital punishment in those cases of forgery, where though frequently incurred it is never inflicted; or had the House, when such a bill was before it, taken into its consideration whether the punishment assigned to other forgeries, not specified in it, might not also be alleviated; considerable difference of opinion might have arisen upon the discussion of each particular clause, but it would have been universally admitted, that such a proceeding was guided by temperance as well as humanity, and a general desire would have been felt to concur in its provisions, as far as prudence would allow.



But as it was, an unrestricted principle was advanced, which with a single exception would at once have subverted the whole of our existing laws on one of the most difficult subjects on which legislation can be exercised. Of this principle the House at the outset thought proper to express its approbation, though it afterwards acted as if it had soon become sensible of its own temerity. The farther the consequences of the principle were traced, the more obvious it became that an adherence to it was impracticable, and there is reason to believe a considerable majority of the members of the House are now satisfied, that had the bill which was framed upon the principle which they themselves had recognised, actually passed into a law, it would have been among the most daring and unfortunate experiments which could have been tried in a country where there is so much unprincipled contrivance incessantly directed against so much unprotected property. It is this tendency to extensive and unhesitating innovation which creates alarm, and if the House perseveres in the practice it has lately adopted, of sanctioning theoretical abstract principles and voting indefinite general resolutions, either on criminal law or any other subject, it does not require much penetration to foresee, that

they will raise expectations which cannot be gratified, and bring both themselves and the public into a situation which they little contemplated.

It seldom turns out to be prudent to bring too sweeping an accusation against a whole system of laws, and when the present flow of sympathy and rage for reformation has spent its force, it will be perceived that the criminal code of England has been assailed of late with too much asperity. Besides the various particular accusations which have been preferred against it, some others have been brought forward of a more vague and general nature. It is said to be a deviation from the old common law of the land; that many of its enactments are attributable to carelessness and selfishness; that the spirit which they breathe is less humane than the penal laws of the Saxons and Normans; and that they are the wonder of foreigners of intelligence and distinction for their severity and inefficiency. Though recourse is had to these objections for the ostensible purpose of removing obstacles to reasonable alterations, their actual effect is to create an impression unfavourable to the provisions of the existing law. None of them are worthy of much consideration. Servile adherence to

the genuine or supposed ancient law of England, has now almost entirely passed away; and all who value the honour or interest of their country will concur in cherishing the disposition which is beginning to prevail, to allow every proposed law to be judged of fairly and impartially by its own merits. What portion of reverence for the old law still exists, does not flow from a predilection in its favour merely because it is the old law of the country, but because under that old law the people of the country have long lived secure and happy. That capital felonies were enacted frequently without discussion, is true, and sometimes without much necessity, is to be regretted. Whenever this last was the case the evil ought to be corrected; the first may have been no evil at all. The understanding of past ages ought not to be measured by the loquacity of the present, and there has probably been more debating about the Catholic claims alone, than about half the laws in the Statute book from the time of King John to the end of William III. A written law is neither better or worse because it was passed with or without debate; and though criminal laws may have been occasionally overlooked in their progress, there is no reason to conclude that those by which the

lives of individuals have been actually taken away, were enacted lightly, or that any considerable number have been suffered to remain in force which were not imagined to be beneficial. In any way in which our criminal code as actually administered can be viewed, it is doing it great injustice ever to put it on a footing with that of Alfred, the Conqueror, or Rufus. Whatever the Normans in sorrow or sickness may have said, or the anticipating genius of Alfred wished to accomplish, it is impossible, without feelings of gratitude, to contrast the penal institutions of our own day, with those uncivilized times, when the most atrocious crimes were expiated by the payment of a sum of money to the king, the lord, or relatives of the injured party; and when public order was maintained by a rigour of police, which checked the exercise of the offices of kindness which were then the most necessary, and at present would amount to an interdict of all social intercourse. On this point we may safely appeal to the opinion of those foreigners of rank and intelligence, who are said to be struck with the frequency of crimes in this country, and the inefficiency of its laws to repress them. It is allowed that nothing is entitled to more strict attention than the obser-

ventions made by well-informed strangers upon the laws and institutions of the states through which they travel. But those whose opinions are most valuable are usually the least forward to deliver them, while the opinions themselves are often the least decided when they come to be delivered. If Englishmen, who are usually neither deficient in knowledge nor acuteness, are frequently thought to be too lavish in praise of what they left at home, as well as precipitate in blaming what they see abroad ; it is as certain that foreigners though enjoying both rank and information are possessed of no privilege which protects them from falling into similar mistakes. Without venturing to reflect either upon their candour or understanding, it is possible that many of those who have been struck with the multitude of crimes and severity of Criminal Laws in England, may neither be accurately informed of the number of them in their own, or have sufficiently reflected upon the peculiar causes by which they are engendered in this.

In the most advanced stage of civilization, and with a crowded and commercial population, it is a vain illusion to fancy that crimes will ever be of rare occurrence. While a just estimate is formed of the numberless blessings



which trade and manufactures spread around them, it is impossible on the other hand to cast a retrospective glance upon the vice and misery which eventually follow in their train, without being surprised that every act should be supposed to bear the stamp of wisdom which promises to be in any way conducive to their increase and multiplication. Where this political state of things exists, crimes have invariably been found to be one of its consequences, and all that can be achieved is to assuage an evil which it is impossible to eradicate. Equal government, civil and religious instruction, the prevention of all flagrant violations of decency and good order, and encouragement to discharge conscientiously the various duties of life, are unquestionably the chief sources from which assistance is to be expected. Without their aid the best criminal laws which can be devised will be but of little avail. Still however it remains a matter of the last importance, to discover what laws are calculated to co-operate most effectually with these means, in reducing crimes to the lowest possible amount both in number and enormity. The difficulty of the subject is so great, that it will create doubt and perplexity in the strongest minds that are candidly applied to its consideration. I am much

inclined to believe however it will be found after an examination of all the facts and arguments which can be brought to bear upon it, that crimes cannot be repressed without a considerable degree of severity, and without the temperate and steady application of capital punishment to a considerable number of those which are committed both with violence and without it. It is of much consequence that this application should be steady as well as temperate. Extensive discretion not only must, but ought to be given to those who administer criminal law, but one would wish if it be possible to see it laid under somewhat stricter limitations than are in this country now imposed upon it. It should not depend upon accident, or the temper or private opinions of the judges of assize, what character the law shall assume; and irregularities in the execution of it are observable in the official returns of the different circuits, which cannot be denied to be inconsistent with the equal distribution of justice. Subject to the modifications which have now been mentioned, capital punishment seems to me the most invariable and efficacious of all those to which recourse can be had for the repression of offences. Many now think otherwise. They believe that

crimes will be most effectually diminished, by promoting to the utmost of their power, mitigation of punishment, prosecution of criminals, and their reformation afterwards. There are formidable objections to each step of this proposed system. Though the extreme mitigation of criminal laws would induce some to prosecute, it would indispose so many others to undergo the trouble and expense of prosecution, that it may be questioned whether it would have the strongest tendency to secure impunity or detection. This would be sufficiently unfortunate. Should extreme mitigation have that effect upon prosecutors which is anticipated from it, that effect would perhaps be fully as much to be deprecated. Unrelenting and indiscriminate prosecution for all offences without reference to their degree, the temptation, situation of the parties, and the other circumstances which may be connected with the case, cannot be contemplated without the deepest apprehension. Let the charitable and beneficent say and do all they can, trial and condemnation will be found in general estimation to leave a stain upon the character, which neither subsequent good conduct nor reformation can remove; and the excessive multiplication of convicted criminals of whatever order

or description, instead of affording any security that fewer persons would be disposed to commit the like crimes in future, would only render the country odious and degraded in its own eyes, as well as those of surrounding nations. It is the dread of this result, and not any satisfaction which is derived from the sufferings of the guilty, which renders it so extremely doubtful whether this extreme mitigation of punishment and activity of prosecution would not prove more repulsive in the issue, than the course of proceeding which they are intended to supersede. Lord Hale desires “in matters criminal to remember, that though my nature may move me to pity, that there is also a pity which is due to my country;” and if the feelings were divulged which rest unrevealed in the bosoms of those who advise or superintend what may be termed an austere administration of criminal law, it might be found that they were neither less kind nor compassionate than those by whom they have sometimes been unjustly stigmatized as illiberal and unmerciful. The extraordinary attention now paid to reformation corresponds with the desired mitigation of punishment and extension of prosecution. Whether the reasons are well founded or not, which have been given in a preceding

part of this inquiry, for supposing, that reformation neither has yet been nor ever will be so successful as its proselytes expect, there can be no hesitation in admitting, that it never can be carried too far, provided always it is kept subordinate to prevention. It should never be forgotten, that prevention is the chief end of all penal law, and unless the punishment which reforms, is calculated to deter also, let reformation prosper as it may, crimes will increase and a sense of shame diminish, the easy transition from evil courses to repentance will cause the bounds of separation between the innocent and the guilty imperceptibly to disappear, and though the morality of prisons and penitentiaries may be improved, that of the whole community will rapidly and constantly decline. It is a strong though perhaps mistaken persuasion that this is the tendency of the extreme mitigation of punishment, indiscriminate prosecution, and universal reformation, which is now aimed at, which makes me solicitous that the legislature should be slow to sacrifice the safety of the body politic to the supposed interests of its most corrupt individual members. ‘*Ad respublicas firmandas, et ad stabiliendas vires, sanandos populos, omnis nostra p̄rgit oratio.* Quocirca



‘ vereor committere, ut non bene provisa et  
‘ diligenter explorata principia ponantur; nec  
‘ tamen ut omnibus probentur (nam id fieri non  
‘ potest) sed ut iis, qui omnia recta atque  
‘ honesta per se expetenda duxerunt, et aut  
‘ nihil omnino in bonis numerandum, nisi quod  
‘ per seipsum laudabile esset, aut certe nullum  
‘ habendum magnum bonum, nisi quod vere  
‘ laudari sua sponte posset.’—*Cicero de Legibus*,  
cap. 13.

FINIS.







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